DOCUMENT RESUME

ED 292 578 PS 017 261

TITLE	Family and Medical Leave Act of 1988. Parts 1 and 2. House of Representatives, 100th Congress, 2d Session. Reports To Accompany H.R. 925 from the Committee on Post Office and Civil Service and the Committee on Education and Labor.
INSTITUTION	Congress of the U.S., Washington, D.C. House Committee on Education and Labor.; Congress of the U. S., Washington, D. C. House Committee on Post Office and Civil Service.
REPORT NO	House-R-100-511
PUB DATE	8 Mar 88
NOTE	110p.; To accompany H.R. 925; see PS 017 007 for this document.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC05 Plus Postage.
DESCRIPTORS	Administration; Adoption; *Birth; Costs; Employees; Federal Government; *Federal Legislation; *Fringe Benefits; *Health; *Leaves of Absence
IDENTIFIERS	Congress 100th; *Parental Leave; Proposed Legislation

ABSTRACT

Provided are favorable reports on the Family and Medical Leave Act of 1988 (H.R. 925) that were submitted by the House of Representatives' Committee on Post Office and Civil Service, and Committee on Education and Labor. H.R. 925 entitles employees to family leave in certain cases involving a birth, adoption, or serious health condition; and temporary medical leave in certain cases involving a serious health condition. The bill includes adequate protection of the employees' employment and benefit rights, and establishes a commission to study ways of providing salary replacement for employees who take leave. The report of the Committee on Post Office and Civil Service includes the text of an amendment establishing a family and medical leave program specifically for federal employees. Supplementary material discusses the impact of the legislation on employing agencies, and employment and benefits protection. Included in the report are letters concerning oversight and administration views, and memoranda for directors of personnel and heads of departments and agencies. The report of the Committee on Education and Labor includes the text of an amendment; minority, supplemental, dissenting, and additional views. Discussion focuses on the background and need for legislation. Both reports contain sections on the bill's legislative history, estimated costs, a section analysis, and the impact of the bill on existing law. (RH)

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100TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 100-511
Part 1

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FAMILY AND MEDICAL LEAVE ACT

MARCH 8, 1988.—Ordered to be printed

Mrs. SCHROEDER, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H.R. 925 which on February 3, 1987, was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 925) to entitle employees to family leave in certain cases involving a birth, an adoption, or a serious health condition and to temporary medical leave in certain cases involving a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike title II and insert in lieu thereof the following:

TITLE II—FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

SEC. 201. FAMILY AND TEMPORARY MEDICAL LEAVE.

(a) IN GENERAL.—(1) Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"Subchapter III—Family and Temporary Medical Leave

"§ 6331. Definitions

"For purposes of this subchapter—

"(1) 'emloyee' means—

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"(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia; and

"(B) an individual under clause (v) or (ix) of such section;

whose employment is other than on a temporary or intermittent basis;

"(2) 'serious health condition' means an illness, injury, impairment, or physical or mental condition which involves—

"(A) inpatient care in a hospital, hospice, or residential health care facility; or

"(B) continuing treatment, or continuing supervision, by a health care provider;

"(3) 'child' means an individual who is—

"(A) a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, and

"(B) (i) under 18 years of age, or

"(ii) 18 years of age or older and incapable of self-care because of mental or physical disability; and

"(4) 'parent' means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

"§ 6332. Family leave

"(a) Leave under this section shall be granted on the request of an employee if such leave is requested—

"(1) because of the birth of a child of the employee;

"(2) because of the placement for adoption or foster care of a child with the employee; or

"(3) in order to care for the employee's child or parent who has a serious health condition.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

"(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"(d) Notwithstanding any other provision of this section—

"(1) a request for leave under this section based on the birth of a child may not be granted if, or to the extent that, such leave would be used after the end of the 12-month period beginning on the date of such child's birth; and

"(2) a request for leave under this section based on the placement for adoption or foster care of a child may not be granted if, or to the extent that, such leave would be used after the end of the 12-month period beginning on the date on which such child is so placed.

"(e)(1) In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the employee shall provide the employing agency with prior notice of such expected birth or adoption in a manner which is reasonable and practicable.

"(2) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

"(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee's child or parent; and

"(B) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

"§ 6333. Temporary medical leave

"(a) An employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position shall, on request of the employee, be entitled to leave under this section.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

"(3) shall be in addition to any annual leave, sick leave, family leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or
"(4) any combination thereof.

"(d) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

"(1) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the employee's health care provider; and

"(2) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

"§ 6334. Certification

"(a) An employing agency may require that a request for family leave under section 6332(a)(3) or temporary medical leave under section 6333 be supported by certification issued by the health care provider of the employee or of the employee's child or parent, whichever is appropriate. The employee shall provide a copy of such certification to the employing agency.

"(b) Such certification shall be sufficient if it states—

"(1) the date on which the serious health condition commenced;

"(2) the probable duration of the condition;

"(3) the medical facts within the provider's knowledge regarding the condition; and

"(4) for purposes of section 6333, a statement that the employee is unable to perform the functions of the employee's position.

"§ 6335. Job protection

"An employee who uses leave under section 6332 or 6333 of this title is entitled to be restored to the position held by such employee immediately before the commencement of such leave.

"§ 6336. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with such employee's rights under this subchapter.

"(b) For the purpose of this section, 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6337. Health insurance

"An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6332 or 6333 of this title may elect to continue the employee's health benefits enrollment while in such leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through that individual's employing agency, the appropriate employee contributions.

"§ 6338. Regulations

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Family and Medical Leave Act of 1988.".

(2) The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER III—FAMILY AND TEMPORARY MEDICAL LEAVE

"6331. Definitions.
"6332. Family leave.
"6333. Temporary medical leave.
"6334. Certification.
"6335. Job protection.
"6336. Prohibition of coercion.
"6337. Health insurance.
"6338. Regulations.

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.—Section 2105(c)(1) of title 5, United States Code, is amended by striking out "53" and inserting in lieu thereof "53, and subchapter III of chapter 63,".

PURPOSE

The primary purpose of this legislation is to entitle employees to family leave in certain cases involving a birth, an adoption, or a serious health condition of a child or parent and to temporary medical leave in certain cases involving a serious health condition of an employee, with adequate protection of the employees' employment and benefit rights.

COMMITTEE ACTION

On February 3, 1987, Representative William Clay (D-Missouri) introduced H.R. 925, a bill to entitle employees to family leave in certain cases involving a birth, an adoption, or a serious health condition of a child or parent and to temporary medical leave in certain cases involving a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave. The bill was referred jointly to the Committee on Post Office and Civil Service and to the Committee on Education and Labor. All of the provisions of title II, and certain provisions of titles III and IV fall within the jurisdiction of the Committee on Post Office and Civil Service. The committee's consideration of the bill was confined to these provisions.

H.R. 925, as introduced, is similar to H.R. 4300, the "Parental and Medical Leave Act of 1986" (99th Congress).

On October 17, 1985, prior to the introduction of H.R. 4300, the Subcommittees on Civil Service and Compensation and Employee Benefits of the Committee on Post Office and Civil Service and the Subcommittees on Labor-Management Relations and Labor Standards of the Committee on Education and Labor held a joint oversight hearing on the issue of parental and disability leave (Serial No. 99-36 [hereinafter cited as 1985 House Hearing]).

On March 4, 1986, Representative William Clay introduced H.R. 4300. This bill was similar to legislation introduced earlier by Representative Patricia Schroeder (D-Colorado), H.R. 2020, the "Parental and Disability Leave Act of 1985" (99th Congress). H.R. 4300 was referred jointly to the Committee on Post Office and Civil Service and to the Committee on Education and Labor.

The Subcommittee on Civil Service and the Subcommittee on Compensation and Employee Benefits held a joint public hearing on H.R. 4300 on April 10, 1986 (Serial No. 99-56 [hereinafter cited as 1986 House Hearing]).

On June 11, 1986, the Committee on Post Office and Civil Service, by a record vote of 18 to 0 and with a quorum present, ordered H.R. 4300 favorably reported without amendment (H. Rept. 99-699, Part 1). The bill was not considered by the House of Representatives.

On April 2, 1987, the Subcommittee on Civil Service and the Subcommittee on Compensation and Employee Benefits held a joint hearing on H.R. 925 (Serial No. 100-8 [hereinafter cited as 1987 House Hearing]).

On May 5, 1987, the Subcommittee on Civil Service approved H.R. 925 for full committee consideration, and on May 19, 1987, the Subcommittee on Compensation and Employee Benefits approved the bill for full committee consideration.

On February 3, 1988, the Committee on Post Office and Civil Service ordered H.R. 925, as amended, favorably reported by a voice vote, a quorum being present.

SUMMARY OF TITLE II OF THE BILL

Title II of H.R. 925, as amended by the committee, establishes a family and medical leave program specifically for Federal employees. It entitles an employee, during any 24-month period, to 18 weeks of job-protected leave without pay upon the birth, adoption, placement for foster care, or serious health condition of a child. H.R. 925 also entitles a Federal employee to take family leave in connection with a serious health condition of a parent. The bill entitles a Federal employee, during any 12-month period, to take up to 25 weeks of job-protected leave without pay because of the employee's own serious health condition. Both family leave and temporary medical leave are to be in addition to any annual leave, sick leave, or other leave or compensatory time off otherwise available to the employee. An employee may choose to coordinate family leave or medical leave with any other leave time available. An employee may take the leave under a method involving a reduced workday, a reduced workweek, or some other alternative work schedule. The leave may be taken on a continuing or intermittent basis or any combination of the two. In cases involving the birth or adoption of a child, family leave must be taken within 12 months following the event.

A Federal employee who uses family or medical leave is entitled to be restored to the position held immediately prior to taking leave. Any interference with an employee's right to take family or medical leave through coercion, intimidation, or threat is prohibited.

Title II of H.R. 925 includes two provisions to help minimize any adverse impact on an agency. First, an employee is charged with providing to the agency, when possible, prior notice of the leave to be taken. The employee should attempt to schedule the leave to accommodate the needs of the agency. Second, in cases involving a serious illness of the employee or the employee's child or parent, the agency may require certification of the problem from the health care provider.

Health insurance coverage continues during periods of family leave and medical leave for those employees enrolled in a Federal employees health insurance plan. An employee must make arrangements with the agency to pay the employee's health insurance contribution.

The Office of Personnel Management (OPM) is authorized to prescribe the regulations necessary for the administration of the family and medical leave provisions.

STATEMENT

HISTORY

In the early 1970's, efforts were made to use Title VII of the Civil Rights Act of 1964 (Public Law 88-352) and the equal protection clause of Article XIV of the United States Constitution to remedy discrimination against pregnant women and working mothers and fathers who sought to fulfill parental responsibilities. Setbacks in the U.S. Supreme Court led to the passage, in 1978, of the Pregnancy Discrimination Act of 1978 (Public Law 95-555), an amendment to title VII the Civil Rights Act of 1964.

The effects of the Pregnancy Discrimination Act have been far-reaching. Employer policies requiring termination and mandatory leave for pregnant employees are now clearly illegal. Pregnant women are entitled to work until childbirth or until medical complications of pregnancy render their continued work attendance medically inadvisable, and they are entitled to return to work on the same basis as other temporarily disabled workers. Women who become disabled because of pregnancy-related conditions are entitled to paid sick leave, personal leave, disability benefits, and medical insurance and hospitalization on the same basis as other disabled workers. Moreover, Title VII has been interpreted to require that leave for the care of children be granted to fathers on the same basis as an employer grants such leave to mothers. *Ackerman* v. *Board of Education of City of New York*, 387 F.Supp. 76 (S.D.N.Y. 1974). [EEOC Compliance Manual Sec. 626.6.]

A 1986 Subcommittee on Civil Service staff study of the parental leave policies of Federal executive branch agencies found that:

> * * * in the absence of a national minimum standard for granting leave for parental purposes, the authority to grant leave and to arrange the length of that leave rests with individual supervisors, leaving federal employees open to discretionary and possibly unequal treatment. The lack of consistency also leads to differences between how men and women are treated in the case of maternity and paternity leaves. An individual requesting leave for parental reasons makes a request to his or her supervisor who has broad authority to grant or deny permission for leave and to determine the length of leave. In other words, the lack of clear federal policy on parental leave means that an employee's opportunity for obtaining adequate time off is subject to chance. (Printed in the 1986 House Hearing p. 85.)

In her 1987 House testimony, Ms. Eleanor Holmes Norton, Professor at Georgetown Law School, found serious problems with this approach:

> We would advise that this constitutes a systemic difference in provision of a job benefit that makes out a prima facie case of violation of Title VII of the 1964 Civil Rights Act. (1987 House Hearing p. 32.)

As important as Title VII and the Pregnancy Discrimination Act have been, they do not address all of the employment related problems of pregnancy and childbirth. Title VII, as amended, is an antidiscrimination law. Its aim is to prohibit employers from treating persons differently on the basis of race, sex, religion, or national origin. Compliance with Title VII requires only that employers treat all employees equally.

Specifically, if an employer grants sick leave and provides disability and health insurance coverage to employees in general, it must, under the Pregnancy Discrimination Act, provide equal coverage to pregnant wage earners who become sick or disabled. If an employer denies benefits to its work force, it is in full compliance with antidiscrimination laws because it treats all employees equally. Similarly, an employer is free to maintain a policy requiring the discharge of employees who take leave to care for seriously ill children or to bond with newly born or adopted children providing the employer's policy does not differentiate with regard to sex. Thus, while Title VII, as amended by the Pregnancy Discrimination Act, has required that benefits and protections be provided to millions of previously unprotected women wage earners, it leaves gaps which an antidiscrimination law by its nature cannot fill. This bill, H.R. 925, is designed to fill those gaps.

TEMPORARY MEDICAL LEAVE

Existing law (5 U.S.C. 6307) entitles Federal employees to sick leave but provides no guarantee of time off for extended periods of illness or injury. Leave without pay may be requested, but it is granted at the discretion of the employing agency. An employee cannot be certain in advance that he or she will receive the needed leave. The Federal Government treats pregnancy like any other medically certified temporary disability. Employees may use available sick leave to cover medical appointments and any period of incapacitation. Leave without pay also may be granted at the discretion of the agency.

H.R. 925 would entitle a Federal employee to up to 26 weeks a year of job-protected leave without pay for a serious health condition which renders the employee unable to perform the functions of such employee's position. This temporary medical leave is a new leave entitlement and is to be in addition to any annual leave, sick leave, family leave, or other leave or compensatory time off available to the employee. The employee may choose to take the temporary medical leave in combination with any other type of leave.

The employee may take the 26 weeks of leave on a schedule designed to accommodate the employee's specific medical problem. The leave can be taken on either a continuing or intermittent basis; in the form of a reduced workday, a reduced workweek, or other alternative work schedule; or through a combination of any such methods. The purpose of this leave is to accommodate all types of illnesses and injuries and to afford an individual the opportunity to return to work.

The test of whether a Federal employee is entitled to temporary medical leave is two-fold: First, is the employee "unable to perform the functions of such employee's position"? And second, is the inability to perform those functions due to a "serious health condition"? This test ensures that there will be no discrimination on the basis of sex, and that employees who need it the most—employees with serious medical conditions that prevent them from working for a limited period of time—have adequate job security.

H.R. 925 ensures that Federal agencies continue their practice of treating employees affected by pregnancy, childbirth, and related medical conditions in the same manner as they treat other employees who become unable to work. The committee recognizes that a special "maternity leave" requirement could be used to deny women job opportunities. Faced with the knowledge that job-protected leaves were required for working mothers and working mothers only, hard-pressed employing agencies would very likely be reluctant to hire or promote women of child-bearing age. However, since employers would be required under H.R. 925 to provide job-protected leave for all employees, they would have little incentive to discriminate against women.

The two-fold test of inability to work and serious health condition also serves to ensure the availability of leave for serious health conditions. The term "serious health condition" is defined to mean—

> an illness, injury, impairment, or physical or mental condition which involves (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment, or continuing supervision, by a health care provider.

This definition is intentionally broad to cover various types of physical and mental conditions for which employees may need leave. The definition is intended to cover pregnancy, childbirth, and all attendant conditions.

Under this definition, the illness or condition must involve care or continuing treatment or supervision. The employee need not be an inpatient or undergoing treatment at the time the leave is requested to qualify as having a "serious health condition." Thus, an employee with a heart condition may require leave as a means of temporarily relieving the stress associated with work. Similarly, a pregnant woman who is unable to work due to severe morning sickness would qualify for leave under this provision even if she need not go to the hospital or the doctor to treat the condition each day.

An employee with a serious health condition may be unable to work simply because of the need to undergo medical treatment. For example, an arthritic employee may need periodic physical therapy; a cancer patient may require chemotherapy treatments. It is in the interest of the Federal government to accommodate these periods of treatment and provide the employee with maximum opportunity to return to work for a portion of the day or week.

Under H.R. 925, the agency may require certification of the problem from the health care provider. This provision was added to permit an agency to ensure that this leave program is not misused. For purposes of this legislation, Christian Science practitioners are considered to be health care providers.

FAMILY LEAVE (PARENTAL)

In the last half century, the increasing participation of women in the workforce at large has created significant social changes in the United States. In 1970 less than 30 percent of married women with children under two years old were also working outside the home. Today, almost 50 percent of these women are working, and the percentage continues to grow. In 1973, 34 percent of the Federal workforce consisted of women. Today, it is 42 percent. It is estimated by the Bureau of Labor Statistics that from 1984 through 1990, women will comprise 67.7 percent of those entering the workforce. Women represent the sole parent in 16 percent of all families. In addition, in most two-parent families, both parents work. By contrast, the family in which the husband is the sole wage earner and the mother is the homemaker—so long thought to be typical—now constitutes only 7 percent of American households.

Despite this revolution in the structure of the family, the United States, alone among industrial societies, has no national policy regarding parental leave. There is no separate category of leave in the Federal service designated "maternity leave." The Federal Personnel Manual (FPM) treats pregnancy like any other medically certified temporary disability. Therefore, sick leave may be used only to cover the time required for physical examinations and to cover the period of incapacitation. Although the needs of a newborn extend beyond the mother's incapacitation, Federal employees who need additional time off must take annual leave or leave without pay.

There is now no guarantee that Federal employees will receive the additional time off they require. Many workers are forced to make difficult choices between the need to provide necessary physical and emotional care for a new child and the need to maintain gainful employment. To promote the stability of the family as a social institution, the Federal Government should ensure that its policies reflect the economic reality in which families exist.

H.R. 925 addresses the need of parents for time off from work obligations when a child is born or brought into a family by providing up to 18 weeks of leave without pay. All Western and Eastern European countries require employers to grant such leaves, as Dr. Sheila Kamerman of Columbia University School of Social Work has documented, and all provide for a period of leave longer than that proposed in H.R. 925.

The typical wage-earning woman in the United States will have two children during her years of employment. Over the course of a working lifetime the amount of leave associated with caring for those two infants is small, particularly when the benefits to family and society are weighed in the balance.

The amount of time allowed for parental leave—18 weeks, or approximately four calendar months—is primarily based on the period that child development experts suggest as a minimum for newborns and new parents to adjust to one another. Dr. T. Berry Brazelton, Associate Professor of Pediatrics at Harvard Medical School, recommends four months, explaining that the early months of adjustment to a newborn infant are a crucial opportunity for family bonding. The Advisory Committee on Infant Care Leave of the Yale Bush Center in Child Development and Social Policy recommends leave for a minimum of six months. (1986 House Hearing p. 23.)

Such recommendations apply with equal force to the period necessary for newly-adopted children and their families to adjust to one another. In fact some adoption agencies require parents to be home at least three years with an adopted child. In her testimony at the 1985 hearing, Ms. Lorraine Poole, an employee of the City of Philadelphia, described the problems she faced in trying to adopt a child:

> It was normal agency procedure for the adoptive parent to leave the workplace for a period for a period of 6 months. This time, it was felt, was very important for both parent and child. As with birth parents, adoptive parents needed time for nurturing and bonding. This was considered vital with the placement of infants. I had completed all those conditions of the adoptive agency, with one exception, the necessary time away from my place of employment.
>
> I contacted the personnel division of the Philadelphia Recreation Department. The personnel officer listened as I explained what my need was, parental leave for adoption. There was chuckle. She stated: "You've got to be in the hospital." I thought I had not made my meaning clear. I was not seeking maternity leave, but parental leave for adoption. It was then that I was told the only leave available for parents was maternity leave. * * *
>
> I did submit a request for the use of vacation and personal leave of absence for a period of 6 months. I was given approval for 2 weeks vacation. When I asked for a

> review, I was told that there would not be a promise that my position would be available when I returned to work. It was with this knowledge, without job security as a single parent, it would not be in the best interest of the child that I adopt at that time. (1985 House Hearing p. 4–5.)

Working parents of seriously ill children, including parents working for the Federal Government, face especially difficult problems and require the security of knowing they will get time off when they need it. This was brought out in the 1986 hearing testimony of Ruth Milam, an employee of the Department of Labor, in which she described her family's experience coping with her daughter Sheila's leukemia:

> I cannot imagine what we would have done if either of us had been told that we must be at work or we will lose our job. Throughout this time, Sheila has needed us there and we have needed to be with her. But we could never have afforded to be without work. Our jobs pay for the health insurance, Sheila's medications, our home food, and kid's education.
>
> People should not be forced to make a decision between their work and time with their seriously ill children. The horrible confusion and distress of having a sick child should not be compounded by fear that you'll lose your job. (1986 House Hearing p. 4.)

Ms. Marilyn Young, an employee with the Social Security Administration, described the pull between work and family:

> I don't know if you can fully understand the stress which is created when you have a family member who needs your care and your employer tells you no. My child was only two months old, on a heart monitor and oxygen, and had to have constant care.
>
> To have my leave request denied when I had kept my employer constantly informed on my situation, was a serious blow to me. (1987 House Hearing p. 67.)

Leave to care for a seriously ill or injured child is essential to provide that child the security of having a parent there in a time of crisis. If a child must undergo major surgery, the leave may be necessary to encompass the surgery itself and the subsequent recuperation period during which at least one parent must stay home to nurse and care for the child. In testimony prepared for an October 29, 1987 hearing before the Senate Labor and Human Resource Subcommittee on Children, Families, Drugs and Alcohol, Dr. Jerome A. Paulson of the American Academy of Pediatrics explained:

> For over thirty years, it has been well known that children who are hospitalized get well faster and have fewer complications when their parents are able to be with them. A child's physical and emotional well being heavily depend on parental participation during a serious illness.
>
> * * *

> In this era of shorter hospital stays, parental involvement with the homebound child may be important not only for emotional support but also for medical support. The parent may be the only person available to stay home with the child until he or she is ready to return to school or day care. The parent may be the only person who can give the child medication as scheduled and observe the child for satisfactory progress or the development of problems.

Dr. Paulson went on to describe the difficulty in coming up with a more specific definition of "serious health condition":

> It is also essential that there be flexibility to allow for individual variation that characterizes the unpredictable nature of childhood illness. Examples of factors that affect the prognosis of an injury, illness or health condition include the age, weight, and medical history and status of the child. The family support system can also impact on the parents' ability to cope with the situation. Even geographical issues such as distance from the hospital can have an influence. The parent whose child is referred to a distant medical center may be in a different situation than the parent whose office is next door to the hospital.

Similarly, if a child's serious health condition requires that the child receive specialized services at school or be placed in a different school setting that provides those services, the parents may need the kind of leave provided by H.R. 925 to make satisfactory arrangements.

Further, for parents of children with disabilities, the choice as to whether to keep them at home or to place them in institutions will often depend whether the parents are able to keep their jobs yet obtain sufficient leave to provide their children with the support they require. According to Bonnie Milstein of the Consortium of Citizens with Developmental Disabilities:

> The overwhelming majority of families now keep their [disabled] children at home. A major reason for this shift away from institutionalization is that study after study has proved the debilitating effects of institutionalization and its costliness. On the other hand, the individual with disabilities who is allowed to remain in a family environment has a much greater likelihood of learning the skills necessary for independence and a fulfilling life in the community.

New parents of healthy children also need time to make appropriate day care arrangements. Given the current problems in the availability and affordability of child care, 18 weeks of leave may be required to secure a proper situation.

Providing sufficient parental leave not only benefits employees but also benefits employers by ensuring productivity. According to Catalyst, a New York-based research and consulting firm to major businesses on personnel policies:

> A program that brings employees back to work before they are rested and ready may actually be more deleterious to productivity than allowing an extended leave. The odds are good that leave-takers who return too soon will not be fully productive or will make costly and needless mistakes * * * When insufficient leave time results in an employee's attrition, the cost of replacing the employee can be substantial.

The 1986 Subcommittee on Civil Service staff study found that some Federal agencies have developed parental leave policy statements. Others have collective bargaining agreements providing specific maternity or parental leave benefits. Yet, all 53 Federal agencies responding to the study assign responsibility for the final decision involving maternity, paternity or adoption leave to the supervisor concerned. (1986 House Hearing p. 83-102.)

H.R. 925 brings standardization to this very inconsistent approach. It entitles a Federal employee to a maximum of 18 weeks of leave due to the birth, placement for adoption or foster care, or serious illness of the employee's child.

The parental leave provided under H.R. 925 is available to any parent. Thus a father as well as a mother can be granted parental leave so long as the leave is requested to respond to one of the circumstances specified in the statute.

Many children in the United States today do not live in traditional "nuclear" families with their biological father and mother. Increasingly, the people who care for children—and who, therefore, find themselves in need of workplace accommodation for their childcare responsibilities—are these children's adoptive, step, or foster parents, or their guardians, or sometimes their grandparent or other relative. The legislation deals with such situations by defining the term "child" to mean a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis. This definition ensures that the employees who are entitled to parental leave are the people who have the actual day-to-day responsibility for caring for the child or who have a biological or legal relationship to the child. Thus a Federal employee who lives with, cares for, and acts as parent to the employee's grandchild would be entitled to parental leave should the child need care for a serious health condition. So too, an employee who is divorced from the parent with custody would be able to take parental leave to care for the child.

For an employee to be eligible for parental leave, the child in question must be under 18 years of age unless that child is incapable of self-care because of mental or physical disability. This provision recognizes tht some parents may need to take time off from work to care for the serious health conditions of their sons and daughters who have reached legal maturity but are unable to take care of themselves.

On July 8, 1986, the Director of OPM, Constance Horner, issued "New Personnel Guidance on Leave for Parental and Family Responsibilities." This guidance does not change existing personnel policy for Federal employees, but it does encourage Federal managers to be flexible in granting family leave. OPM's increased sensitivity to the family needs of its employees is welcomed, as is the recognition that "responsiveness to family needs works in the long run to the advantage of the organization." Yet, the OPM guidance continues to place responsibility for granting family leave with each individual supervisor, a policy which has too often proved to be arbitrary and unfair.

FAMILY LEAVE (ELDERCARE)

H.R. 925 broadens parental leave to allow employees to take unpaid leave when a parent has a serious health condition. Families have traditionally cared for their disabled elderly. But, today, employees are squeezed between work demands and family responsibilities.

A briefing book, prepared for the June 17, 1987 National Conference on "Issues for an Aging America: Employees and Eldercare," cosponsored by the Conference Board, the U.S. Administration on Aging, and the University of Bridgeport, reported that:

> At present there are some 6.6 million dependent elders, that is, persons over age 65 with some need for assistance from others. The number of such persons will climb rapidly during the remainder of this century and reach some nine million persons by 2000 A.D. and 19 million by 2040 A.D.

This explosion in the number of elderly coupled with the dramatic influx of women—the traditional family caregiver—into the workforce has made "eldercare" a critical work issue. Ms. Eleanor Holmes Norton explained this problem:

> According to a Department of Health and Human Services estimate, 2.2 million people, predominantly women, cared for 1.2 million frail elderly people in 1982. Approximately one million of them were employed for some time during the care-giving experience. And this, of course, is in addition to the more familiar figures for mothers with children who are young.
>
> Reliance on healthier family members is often the most cost-efficient and desirable way to care for the elderly. But this care cannot be rendered with mirrors. If no accommodation to this need is made on the job, the result will almost surely be an increasing shift of care to high cost, professional institutions, much of it at taxpayers' expense. (1987 House Hearing p. 33.)

Dana Friedman of the Conference Board echoes the fact that eldercare is very much a workplace issue:

> The business community is about to feel the effects of a coordinated effort to show why it is in their best interests to help those who care for elderly relatives. Results of Federally funded research will document the problems faced by such employees and substantiate the effects on performance. These data make the case for care of the elderly as a bottom-line business concern, and establish the corporate

> rationale for involvement. ("Eldercare: The Employee Benefit of the 1990s?" Across the Board, June, 1986, p. 45.)

The briefing book for the National Conference on Issues for an Aging America (at page 4) stresses the need for flexible work policies and cites evidence that the lack of such flexible policies can force caregivers to quit their jobs.

Caring for the elderly creates financial and emotional strains especially on working families. Allowing unpaid family leave to be used in connection with a serious health condition of a parent would greatly alleviate the pressure on the worker and serve to retain quality employees in the workforce.

Parental leave and eldercare together form family leave, a new entitlement in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off available to an employee. As with medical leave, a Federal employee may choose to take the family leave in combination with any other available leave. An employee who takes family leave is entitled to be restored to the position held by the employee immediately before taking the leave. The employee may take the 18 weeks of leave on either a continuing or intermittent basis; in the form of a reduced workday, a reduced workweek, or other alternative work schedule; or through a combination of methods.

The purpose of this leave is to accommodate the employee whose seriously ill or injured child or parent might require periodic hospitalization or treatment. It also allows employees to work part-time to allow for the adjustment of a new child to a family.

Ms. Eleanor Holmes Norton framed this legislation best:

> This is historic legislation. In a country in which most legislation aids individuals, H.R. 925 is notable for the way it strengthens the support system of the family.
>
> Because working women continue to bear disproportionate responsibility for the nuts and bolts of family life, H.R. 925 may be viewed as feminist legislation. It is that and it is much more.
>
> It is perhaps the first piece of overtly family legislation.
>
> It is difficult to think of legislation passed in the last 30 years to benefit women that has had a greater impact on the wellbeing of the American family than Title VII of the 1964 Civil Rights Act, it was my great privilege to administer, and other legislation guaranteeing equal employment opportunity for women. Yet none of that legislation was as explicitly for the benefit of the family as the FMLA.
>
> This legislation, as much as any you have had before you, makes clear the inescapable link between benefits for working women and benefits for the entire family.
>
> The disarray in much of family life in the United States today has proceeded from the economy's demand that women work, coupled with the society's failure to accommodate its institutions to this economic reality. (1987 House Hearing p. 31.)

IMPACT ON AGENCY

H.R. 925 includes a new provision to help minimize the impact of family and medical leave on an employing agency. An employee is required to provide, when possible, prior notice to the agency of the leave to be taken and to make a reasonable effort to schedule the leave so as not to disrupt the operations of the employing agency.

OPM Deputy Director James Colvard acknowledged this change in his April 2, 1987, hearing testimony but stated that:

> While title II does require an empoyee who has a foreseeable need to use family or medical leave to make reasonable effort to inform the agency in advance of this need, it grants the employee a unilateral right to schedule and take the leave. This situation limits the agency's options for dealing with the absence and could result in unfair burdens on co-workers. (Ibid, p. 29.)

According to Mr. Colvard, "the essence" of OPM's objection to H.R. 925 is that "it abandons any effort to balance the employee's need for leave with the agency's need to get the public's work done." (Ibid, p. 27.) Others disagree.

In her testimony, Ms. Judy Farrell, Project Coordinator of the Economic Policy Council of the United Nations Association, described other instances of job-protected leave within the Federal workforce where supervisors continue to manage:

> Managers already deal, on a regular basis, with employees leaving their jobs either temporarily or permanently. In fact, employers do cope with leaves of absence required for jury service and for military leave for reservists and members of the National Guard. I would just like to quote a statement from a publication of the Office of the Assistant Secretary of Defense, National Committee for Employers, Support of the Guard and Reserve, "Almost all members of National guard and military Reserve units take part in some type of training, whether weekend drills, summer camp or special training. To attend this training, reservists often have to take time off from their jobs, with absences lasting from a few hours to a few months. Federal law protects reservists against being fired or denied certain employment benefits because their military activities interfere with their jobs." (Ibid, pp. 94–95).

Since 1982, the General Accounting Office (GAO) has provided its employees up to 26 weeks of unpaid, job-protected parental leave. Comptroller General Charles A. Bowsher testified that providing this leave has proved beneficial to the employees and agency alike.

> * * * our policy has also helped us to attract and retain good employees who might otherwise have considered resigning if faced with the competing demands of very early parenthood and an employer insensitive to those demands. Recognizing the considerable expense of hiring, training and developing personnel, guaranteeing a reasonable amount of unpaid parental leave appears to be a sound investment. (Ibid, p. 14.)

Reflecting on her experience as Chair of the Equal Employment Opportunity Commission, a Federal agency with 3,500 employees, Ms. Norton explained:

> When I think of what would have happened if the employees who simply worked around me, people on whom I depended, had the anxiety that attends not knowing whether the government would allow them family leave, when I consider what would happen if a person had to take time off and I had to consider how much time off I should allow in order to make sure, that I wasn't discriminating against somebody else—and at EEOC, because people knew their rights, they would have been inclined to file against the agency in a second if general counsel's office had allowed leave for one period of time, several weeks, whereas somebody in another office had a habit of allowing it only for a shorter period of time.
>
> I didn't need headaches like that at EEOC. When I came to the agency, there were headaches enough. (Ibid, p. 65.)

EMPLOYMENT AND BENEFITS PROTECTION

Federal employees who take family or temporary medical leave are entitled to return to the positions they held immediately before taking the leave. This is consistent with existing policy for leave without pay in the Federal Government. (Federal Personnel Manual, p. 630-27.)

There exists the possibility that an agency manager, feeling pressure to complete certain job assignments, could coerce an employee not to take family or medical leave. Accordingly, an employee is prohibited from intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce any other employee for the purpose of interfering with the employee's right to job-protected family or medical leave. This includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation). This prohibition does not include consultations or discussions concerning the scheduling of family or medical leave for the purpose of minimizing the disruption of the operations of the employing agency.

Under the Civil Service Reform Act of 1978, the Special Counsel of the Merit Systems Protection Board is responsible for investigating certain violations of civil service laws. The committee expects the Special Counsel to pursue aggressively any violation of this Act.

H.R. 925 allows an employee who is enrolled in a health plan under the Federal Employees Health Benefits Program to continue such health insurance coverage during a period of family or medical leave. A payment arrangement would be agreed upon between the agency and the employee to cover the employee's contributions.

OPM is required to prescribe regulations necessary for the administration of the family and medical leave programs. These regulations must be consistent to the extent practicable with the regulations prescribed by the Secretary of Labor under title I of this Act.

CONCLUSION

H.R. 925 would establish a universal floor below which the Federal Government could not sink in accommodating important family needs of employees. Specifically, the bill would create reasonable periods of time during which Federal employees could take leave for medical reasons, early child-rearing, and to care for seriously ill children and parents without the risk of termination or retaliation. It thus recognizes the dramatic change in the work force because of the growing participation of women, especially mothers. Perhaps most importantly, it addresses the needs of the most vulnerable of wage earners, the single woman head of household. It speaks to that crucial intersection between job and home where family needs clash with the demands of the work place. The Federal Government's workforce is 42 percent women but its personnel policies are more suited to a male work force with wives performing the traditional functions in the home.

The job security provisions of H.R. 925 constitute sound labor and family policy as well as contribute to the equality of the sexes. Wage replacement is a critical element of adequate worker protection, especially for lower income workers. Although H.R. 925 does not mandate wage replacement, it would create a congressional commission with a charter broad enough to study methods of providing paid family and medical leave for Federal employees. The committee expects the commission to do this. However, the committee cannot foresee a circumstance wherein the commission should need to receive information properly classified for reasons of national security. The committee notes that a number of different models for financing leave are in use around the world, including some in place at the state level in the United States.

H.R. 925 should not create a burden for the Federal Government as an employer. In fact, the committee believes that this bill will result in significant benefits to the Government through enhanced worker morale, productivity and retention of quality employees. In many agencies employees already receive needed time off for medical problems and for family leave. The bill simply establishes a clear Federal policy and ensures that all employees are treated fairly and equitably.

SECTION ANALYSIS OF TITLE II

Section 201. Family and temporary medical leave

Section 201 amends chapter 63 of title 5, United States Code, by adding a new subchapter III—Family and Temporary Medical Leave—containing the following sections.

Section 6331. Definitions

Paragraph (1) of section 6331 defines "employee" to mean an "employee" as defined by section 6301(2) of title 5, United States Code, excluding an individual employed by the District of Columbia government. Physicians, dentists, or nurses in the Department of Medicine and Surgery, Veterans' Administration, and teachers or individuals holding teaching positions in the Department of Defense Dependent Schools are specifically included in the definition of "employee." Individuals who work on a temporary or intermittent basis are not included.

Paragraph (2) defines "serious health condition" to mean an illness, injury, impairment, or physical or mental condition which involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment or continuing supervision by a health care provider.

Paragraph (3) defines "child" to mean a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis, who is under 18 years of age or, if 18 years or older, is incapable of self-care because of a mental or physical disability.

Paragraph (4) defines "parent" to mean a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

Section 6332. Family leave

Section 6332 establishes a family leave program for Federal employees. An employee is entitled to request up to 18 weeks of leave without pay because of the birth, adoption, or placement for foster care of that employee's child. In addition, an employee is entitled to request and receive up to 18 weeks of leave without pay to care for that employee's child or parent who has a serious health condition. The family leave may not exceed 18 weeks within any 24-month period and may be taken in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off available to the employee. The employee may take the 18 weeks of leave on either a continuing or intermittent basis, through a reduced work week, reduced workday or other alternative work schedule, or by a combination of any such methods. The employee must use any family leave based on the birth or placement for adoption or foster care of a child within 12 months following the event. The employee must make a reasonable effort to schedule the leave so as not to disrupt the operations of the employing agency. The employee is required to provide prior notice to the employing agency when the necessity for family leave is foreseeable.

Section 6333. Temporary medical leave

Section 6333 establishes a temporary medical leave program for Federal employees. An employee is entitled to request up to 26 weeks of leave without pay during any 12-month period if the employee is unable to perform the functions of such employee's position because of a serious health condition. The employee may take the 26 weeks of leave in addition to any annual leave, sick leave, family leave, or other leave or compensatory time off available to the employee. The employee may take the 26 weeks of leave on either a continuing or intermittent basis, through a reduced work week, reduced work day or other alternative work schedule, or by a combination of any such methods. The employee must make a reasonable effort to schedule the leave so as not to disrupt the operations of the employing agency. The employee is required to provide prior notice to the employing agency when the necessity for temporary medical leave is foreseeable.

Section 6334. Certification

Section 6334 provides that in cases involving a request for leave based on a serious health condition, the employing agency may require that the request be supported by a certification issued by the health care provider of the employee or of the employee's child or parent. The certification shall include the date of onset of the serious health condition, the probable duration of the condition, the medical facts known to the provider regarding the condition, and in cases when the serious health condition is that of the employee, a statement that the employee is unable to perform the functions of the employee's position.

Section 6335. Job protection

Section 6335 entitles an employee who takes family or temporary medical leave to be restored to the position held by the employee immediately before taking the leave.

Section 6336. Prohibition of coercion

Subsection (a) of section 6336 prohibits an employee from intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce any other employee for the purpose of interfering with the employee's right to job-protected family or medical leave. Subsection (b) of section 6336 provides that the terms "intimidate, threaten, or coerce" include promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

Section 6337. Health insurance

Section 6337 provides for the continuation of health insurance coverage during family or medical leave. An employee who is enrolled in a health benefits plan under the Federal Employees Health Benefits Program may elect to continue health insurance coverage during a period of family or temporary medical leave and arrange to pay into the Employees Health Benefits Fund the appropriate employee contributions.

Section 6338. Regulations

Section 6338 requires the Office of Personnel Management (OPM) to prescribe regulations to administer the provisions of the new subchapter III of chapter 63. The OPM regulations must be consistent with the regulations prescribed by the Secretary of Labor under title I of the Act.

COST

The cost estimate prepared by the Congressional Budget Office pursuant to sections 308(a) and 403 of the Congressional Budget Act of 1974 is set forth below.

U.S. Congress,
Congressional Budget Office,
Washington, DC, February 24, 1988.

Hon. William D. Ford,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed Title II of H.R. 925, the Family and Medical Leave Act of 1987, as ordered reported by the House Committee on Post Office and Civil Service, February 3, 1988. CBO estimates that enactment of Title II of H.R. 925 would not result in significant additional costs to the federal government.

Title II of H.R. 925 would allow federal government employees up to 18 weeks of leave without pay, in addition to any other type of leave, for the birth, adoption, or foster care of a child or to care for a sick child or parent. Title II would also entitle an employee to 26 weeks of leave without pay when the employee is unable to work because of a serious health condition. In addition, Title II would guarantee job protection and allow for continuation of life and health insurance for employees who take such leave.

Under current law, there is no comprehensive federal policy on parental and medical leave. The Office of Personnel Management provides guidelines for granting leave for various purposes, but implementation of leave policy is up to the discretion of each employee's supervisor.

Based on information from a number of federal agencies, it appears that employees who currently take leave without pay for purposes encompassed by H.R. 925 generally take it for periods of time shorter than authorized by the bill. Thus, enactment of this bill is likely to result in more leave without pay for affected federal employees. Whether this would increase agencies' costs depends on whether the agencies hire temporary replacements and what salary and benefits are paid. A recent General Accounting Office study of private firms' practices indicates that in many cases no temporary replacements are hired. While no comparable information is available regarding federal agencies, we believe that in aggregate, granting such employees leave without pay for extended periods does not result in costs greater than if the employee continued to work—in part because the salaries and benefits of temporary replacements will sometimes be less than those of the permanent employees and in part because sometimes replacements will not be hired. To the extent that agencies have to hire replacement personnel, some additional costs could result from increased recruiting and personnel administration, but we do not expect such costs to be significant.

Enactment of Title II would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum,
Acting Director.

OVERSIGHT

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Civil Service and the Subcommittee on Compensation and Employee Benefits are vested with legislative and oversight jurisdiction over the subject matter of Title II of this legislation. As a result of the hearings, the subcommittees concluded that there is ample need and justification for enacting this legislation.

The subcommittees received no report of oversight findings or recommendations from the Committee on Governmental Operations pursuant to clause 4(c)(2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of House Rule XI, the committee has concluded that the enactment of title II of H.R. 925 will have no inflationary impact on the national economy.

ADMINISTRATION VIEWS

Set forth below are the views of the Office of Personnel Management and the United States Postal Service on this legislation.

U.S. OFFICE OF PERSONNEL MANAGEMENT,
Washington, DC, June 30, 1987.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Office of Personnel Management has reviewed H.R. 925, "the Family and Medical Leave Act of 1987." The bill would require private employers and Federal, State, and local governments to provide up to 18 weeks of unpaid leave to an employee who chooses to stay home with a newborn, newly adopted, or seriously ill child or parent. It would also require up to 26 weeks of unpaid leave for an employee who is temporarily disabled.

As single parents and parents with working spouses increasingly enter the nation's work force, the difficulties of balancing career, childbirth, and myriad other family and job responsibilities are confronting a growing number of Federal employees.

The Federal Government has a generous leave system which is generally able to meet employees' family and medical needs, including childbirth. Managers are encouraged to accommodate the needs of individual workers in a flexible manner.

Employees accrue sick leave at the rate of four hours every two weeks, or 13 days a year, and agencies may advance up to 30 days of sick leave to an employee with a serious disability or ailment. Employees may use sick leave for incapacitation due to childbirth. Federal employees accrue annual leave at the rates of 13, 20, or 26 days a year, depending on the length of their Federal service. Sick leave accumulates without limit during an employee's Federal career. In most cases, an employee can accumulate annual leave and carry up to 30 days from one year to the next.

Leave without pay may be requested and granted, not merely for 18 weeks, or even 26 weeks, but in amounts limited only by the employing agency's discretion. Employees who feel that leave has been denied them unfairly may appeal administratively, or if they are covered by a bargained agreement, may file a grievance.

Federal employees enjoy firm job protection whenever they are on approved leave, whether paid or unpaid. When employees are on leave, they (and their covered dependents) continue to be eligible for health and life insurance benefits.

Last year, the Office of Personnel Management undertook a review of leave options available to employees with ill children, childbirth, emergency medical, and other problems. Following our review, OPM issued explicit Federal Personnel Manual guidelines for Leave for Parental and Family Responsibilities, and for Leave Without Pay. The guidelines urge agencies and managers to be flexible and compassionate in meeting employees' needs for leave, and yet preserve managers' ability to pursue agency functions. I have enclosed a copy of the guidelines, and I urge you to review them carefully.

OPM's central objection to H.R. 925 is that it abandons any attempt to balance the employee's need for leave with the manager's and agency's need to accomplish the agency's work. Despite language that obligates employees to consult with supervisors when advance notice is possible, the bill leaves total discretion for taking this leave with the employee.

Title II of H.R. 925 would impose on the Federal government family and medical leave requirements similar to those required of private, State, and local employers under Title I. However, significant differences exist between the two titles that would have the effect of imposing on Federal managers even more onerous restrictions on management flexibility than are imposed on private, State, and local managers.

The most serious of these differences occurs when the employee returns from leave provided in the bill. Title II provides that an employee is "entitled to be restored to the position held by such employee immediately before the commencement of such leave." For employees covered under Title I, the bill provides entitlement to be restored to the same position, or "to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment." While restoration to the same job would often cause no problem (this usually occurs under the current Federal system), there would be cases where this restoration would hinder an agency's ability to perform its mission. For example, an employee in a specialized position might take frequent or intermittent leave over a long period of time, as provided by H.R. 925. Yet the agency would be able to fill in behind the employee only on a temporary basis, regardless of the amount of training required for substitute employees. As a matter of consistency, other employees returning from extended leave, such as veterans returning from military service, are not entitled to be returned to the exact position they most recently held.

However, even if these technical problems were resolved, OPM would still object to this legislation. H.R. 925 creates a category of leave under which employees are entitled to take large amounts of leave while the job they left is held open for them.

With respect to the provisions of H.R. 925 dealing with the private sector, the Administration believes the bill would be a counterproductive intrusion into the labor market and into the rights and responsibilities of private sector employers. Private sector employers and employees, in labor market competition or in union negotiations, should be free to consider these benefits in relations to other compensation options.

Finally, we must oppose the provisions in the bill that would establish a Commission to explore ways of providing workers with full or partial salary replacement during parental leave. This Commission would be another unnecessary bureaucracy whose mission is to build an expectation and pressure for expanded leave benefits. It is an obvious step toward opening the way for an unwarranted and extremely costly new program.

President Reagan has made clear his commitment to stengthening the role of the family in American life. As increasing numbers of single parents and parents with working spouses take up Federal Careers, it is clear that it is in the Federal Government's interest to address the demands made on working parents. We feel that the guidance produced last year is responsive to employees' family and urgent medical needs, while still preserving Federal managers' ability to accomplish their jobs.

Therefore, the Administration is strongly opposed to enactment of H.R. 925. The Office of Management and Budget advises that there is not objection to the submission of this report, and that enactment of H.R. 925 would not be in accord with the program of the President.

Sincerely,

CONSTANCE HORNER,
Director.

Enclosure.

U.S. OFFICE OF PERSONNEL MANAGEMENT,
Washington, DC, July 8, 1986.

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

From: Constance Horner, Director.
Subject: New personnel guidance on leave for parental and family responsibilities.

I want to bring to your personal attention the fact that new guidance has been issued to your personnel offices on the subject of leave for parental and family responsibilities. As you know, President Reagan has emphasized the importance of strengthening family values, and this new guidance—together with your active support—should enhance further the role of the Federal Government as a family-oriented employer.

I believe the new guidance supports the Administration's goal of strengthening the role of the family in American life. In it we urge you to formulate policies on leave for parental and family responsibilities that are compassionate and flexible for the employee. But at the same time, we caution you to avoid policies that would hinder unduly the accomplishment of organizational goals. I believe the needs of families and the efficient operation of the Federal Government can be balanced through the application of judicious policies.

U.S. Office of Personnel Management,
Washington, DC, July 8, 1986.

MEMORANDUM TO DIRECTORS OF PERSONNEL

From: Claudia Cooley, Associate Director for Personnel Systems and Oversight.
Subject: New FPM guidance on leave for parental and family responsibilities.

The Office of Personnel Management is issuing new guidance on the subject of leave for parental and family responsibilities. As the attached copy of Director Horner's memorandum for heads of departments and agencies points out, this guidance is intended to support the Administration's goal of strengthening the role of the family in American life by urging Federal agencies to formulate policies on leave for parental and family responsibilities that are compassionate and flexible for the employee. At the same time, Federal agencies are urged to avoid policies that would hinder unduly the accomplishment of organizational goals.

The new guidance is in the form of revised subchapter 13 of chapter 630 of the basic Federal Personnel Manual. You will receive printed copies of this revised subchapter through the normal FPM distribution system. An advance copy of this approved guidance is attached to this memorandum for your convenience.

Attachments.

Subchapter 12. Leave Without Pay

12-1. DEFINITION

a. Leave without pay (LWOP) is a temporary nonpay status and absence from duty granted upon an employee's request. LWOP may be granted only for those hours of duty which comprise an employee's basic workweek.

b. The permissive nature of LWOP distinguishes it from absence without leave (AWOL), which is an absence from duty that is not authorized or approved (including leave not approved until required documentation is submitted), or for which a leave request has been denied.

12-2. GRANTING LEAVE WITHOUT PAY

a. Administrative Discretion. Authorizing LWOP is a matter of administrative discretion. An employee is not entitled to be granted LWOP as a matter of right, except in the case of (1) disabled veterans who are entitled to LWOP for medical treatment under Executive Order 5396. July 17, 1960 (FPM Supplement 990-2, Book 630, S1-4), (2) reservists and National Guardsmen who are entitled to a leave of absence for military training under section 2024(d) of title 38, United States Code, and (3) for limited periods, employees receiving injury compensation under chapter 81 of title 5, United States Code.

b. Standards. The standards described below are nonregulatory and are issued as guidance to Federal agencies in acting upon LWOP requests.

(1) Matters to be considered. Each request for LWOP should be examined closely to assure that the value to the Government or the serious needs of the employee are sufficient to offset the costs and administrative inconveniences that result from the retention of an employee in a LWOP status. Among the matters to be considered are:

(a) Encumbrance of a position;

(b) Loss of services that may be vital to the organization;

(c) Obligation to provide employment at the end of the approved LWOP;

(d) Creditable service for such benefits as retirement, leave accrual, within-grade increases, and severance pay; and

(e) Eligibility for continued coverage (without cost to the employee for up to 1 year) for life insurance and continued coverage (with payment of employee's portion of the premiums by the employee for up to 1 year) for health insurance benefits.

(2) Approval of extended LWOP. As a condition for approval of extended LWOP, there should be a reasonable expectation that the employee will return to duty at the end of the LWOP. In addition, it should be apparent that at least one of the following benefits would result:

(a) Fulfillment of parental or family responsibilities (see subchapter 13 of this chapter);

(b) Increased job ability;

(c) Protection or improvement of employee's health;

(d) Retention of a desirable employee; or

(e) Furtherance of a program of interest to the Government (e.g., Peace Corps volunteers).

(3) Examples of proper cases for extended LWOP. The following list includes examples of instances in which approval of extended LWOP would be proper, all other factors being favorable:

(a) To attend to parental or family responsibilities, as outlined in subchapter 13 of this chapter,

(b) For educational purposes, when the course of study or research is in line with a type of work performed by the agency and would contribute to the mission of the agency;

(c) For temporary service to non-Federal public or private enterprise, when there is a reasonable expectation that the employee will return to duty and when one or both of the following will result:

(i) The service to be performed will contribute to the public welfare; and/or

(ii) The experience to be gained by the employee will serve the interests of the employing agency;

(d) For the purpose of recovery from illness or disability not of a permanent or disqualifying nature, when continued employment or immediate return to employment would threaten the employee's health or the health of other employees;

(e) To protect employee status and benefits during the period pending an initial decision by OPM on a disability retirement application;

(f) To protect employee status and benefits during any period pending action by the Office of Workers' Compensation on a claim resulting from a work-related illness or injury (Agencies are urged to keep the employee on the rolls of the agency for up to 1 year, with possible extensions if the employee may be able to return to work by the end of the extension period.);

(g) To avoid a break in the continuity of service for career or career-conditional employees who are seeking other Federal employment outside their commuting area; or

(h) To serve as an officer or employee of a union representing Federal employees under section 7131 of title 5, United States Code.

12-3. DURATION

a. Legal restrictions. There is no limit prescribed by law or regulation on the amount of LWOP that can be granted.

b. Suggested limitation. (1) Except in unusual circumstances or in furtherance of a program of interest to the Government (e.g., Peace Corps volunteers), when it is known in advance that the period of absence will exceed 1 year, LWOP should not be authorized initially for any period in excess of 52 calendar weeks; and

(2) Extensions of LWOP should be scrutinized even more carefully than the original grant for adherence to the standards outlined above. This recommendation, however, does not apply to absence for service with the Armed Forces or for service with reemployment rights effected under applicable executive orders or OPM regulations.

12-4. RECORDING

a. Notification of personnel action. The instructions in FPM Supplement 296-33 must be followed in recording LWOP.

b. Retirement record card. The procedures and instructions in FPM Supplement 831-1 must be followed to record LWOP in excess of 6 months in a calendar year, or in excess of 3 calendar days for a reemployed annuitant claiming supplement annuity, on the Individual Retirement Record (Standard Form 2806).

SUBCHAPTER 13. LEAVE FOR PARENTAL AND FAMILY RESPONSIBILITIES

13-1. INTRODUCTION

This subchapter gives agencies guidelines on leave for various types of parental and family responsibilities. Leave for the birth of a child, leave for child care, leave for adoption and foster care, and leave for other parental and family responsibilities are discussed here. Agencies should use these guidelines as a reference in reviewing or establishing policies on these subjects. Leave for parental and family responsibilities consists of appropriate combination of annual leave, sick leave, and leave without pay. Sick and annual leave can also be advanced to employees. For more specific guidance on these kinds of leave, please consult other parts of this chapter.

13-2. GENERAL

a. Most of us, whether we are parents or not, know that being a parent or prospective parent carries certain responsibilities that cannot be ignored or even postponed. Maternity is certainly chief among them, and we have become increasingly accustomed to dealing with leave needs of expectant parents in a responsible and sensitive way. We need to show the same concern for other aspects of child care and family life as well.

b. We know that prolonged absences of employees make it harder to reach organizational goals. We also know that the work pressures make it hard, at times for managers to empathize with the problems of parents. Still we think it is possible through sound judgment and agency policies to strike a proper balance between the needs of the organization and the needs of the family. Indeed, responsiveness to family needs works, in the long run to the advantage of the organization. Good morale and the retention of experienced and productive employees contribute to a healthier organization.

13-3. EMPLOYEE AND AGENCY RESPONSIBILITIES

a. Employee responsibility. An employee should ask for leave as far in advance as possible particularly if the absence is to be prolonged, as is usually the case in leave for childbirth, for the care of a newborn child, or adoption of a child. This gives the agency time to make necessary adjustments to cope with the absence, such as finding someone to fill in temporarily or changing work assignments.

b. Agency responsibility. (1) The overall objective of the agency should be to develop policy on leave for parental and family responsibilities that is compassionate and flexible for the employee. Yet in exercising this discretion, agencies should not establish policies that will adversely affect mission accomplishment.

(2) Managers should administer leave policies equitably and reasonably. But since individual needs will vary both for the employee and the organization, we advise building flexibility into agency leave policies.

13-4. CONTINUED EMPLOYMENT AFTER CHILDBIRTH OR ADOPTION

a. Employees who plan to return work. Agencies have an obligation to assure continued employment for an employee for whom extended leave has been approved unless termination is otherwise required by expiration of appointment, by reduction in force, for cause, or for other reasons unrelated to the absence. The employee must be allowed to return to the position formerly occupied or to a position, within the same commuting area, of like seniority, status, and pay.

b. Employees who do not plan to return to work. An employee who has given birth and does not plan to return to work should submit her resignation at the expiration of her period of incapacitation. She may, however, be separated earlier for other reasons, such as expiration of appointment, reduction in force, cause, or other reasons unrelated to the maternity absence.

13-5. LEAVE FOR CHILDBIRTH

a. Physical incapacitation and recuperation. (1) Many women want to work virtually up to their expected date of delivery. Other women may need to stop work at some point before the due date for their own health and that of their unborn child. Sick leave may be used for this purpose. The Pregnancy Disability Amendment (P.L. 95-552) of Title VII of the Civil Rights Act provides that pregnancy must be treated in the same manner as any other short-term disability and employers may not set an arbitrary date at which maternity leave must begin.

(2) Agencies should always be aware of working conditions or strenuous requirements in the workplace that could have an adverse effect on an expectant mother. If, after consulting her doctor, an employee asks for a change in duties or assignment, every reasonable effort should be made to accommodate her. Agencies may request medical certification of the nature of the limitations recommended by the employee's doctor. Sick leave may also be used for physical examinations.

(3) Sick leave is appropriate for the period of incapacitation for delivery and recuperation. Periods of recuperation will vary because of the physical condition of the mother and the physicians's instructions. Agencies should bear in mind that it takes longer to recuperate from a Caesarean delivery.

b. Infant care. A new mother may need time beyond her recuperation period to adjust to a new family member and develop a close relationship with the infant. At the same time, additional responsibilities may fall upon a father who may be needed at home during and after a mother's hospitalization to help with household duties or to care for other children. In addition, fathers may need time to build a close relationship with the newborn. Single parents or couples will often need some time to make arrangements for the care of children before returning to work. Agencies should consider the importance of this period for the well being of both parents and children. Annual leave and leave without pay are appropriate to meet these needs.

13-6. LEAVE FOR ADOPTION AND FOSTER CARE

a. The adoption process. Adoption is often a long and arduous process for a prospective parent. There are many arrangements that adoptive parents must make. For example, an adoptive parent often must make a commitment to stay home with the adopted child for the first several months. This is why agencies should be flexible and compassionate in the granting of leave during this important time. Certainly, agencies need to give adoptive parents the same consideration as natural parents. Leave for adoption may be annual leave or leave without pay. Sick leave for this purpose is not appropriate.

b. Foster care. As with adoptive parents, agencies need to be flexible and compassionate in the granting of leave for employees who are foster parents. Annual leave and leave without pay are appropriate for employees who must take care of the needs of foster children.

c. Children with special needs. There has been increasing emphasis in recent years on encouraging the adoption of children who have historically been difficult to place; for example, children with mental or physical handicaps. Employees who take on this enormous responsibility may need even more support and encouragement than parents of children who are not disadvantaged. Annual leave and leave without pay are appropriate for such purposes.

13–7. LEAVE FOR CHILD CARE

a. Well-baby care. Parents take their babies to the pediatrician periodically for check-ups to make sure the baby is exhibiting the normal developmental signs and is otherwise healthy. These check-ups continue, at decreasing intervals, as the child grows older. These responsibilities only require leave for a few hours or at most a day here and there. But they are responsibilities that cannot be postponed as readily as other leave plans. Annual leave and leave without pay are appropriate.

b. Routine illness. Children often suffer minor maladies such as ear infections, colds, stomach ailments, and mysterious rashes. As a result, supervisors may find that parents take more unscheduled leave than other employees. There is often nothing a working parent can do other than stay home with the child. Fortunately, these routine illnesses are usually short-term. Annual leave and leave without pay are appropriate for this purpose.

c. Other illness. Unfortunately, children still get highly contagious diseases for which public health officials require the child to be quarantined, isolated, and restricted. Employees who must stay home to care for a child with such a disease, or who have been exposed to such a disease, should be granted sick leave.

13–8. LEAVE FOR OTHER PARENTAL AND FAMILY RESPONSIBILITIES

a. School schedules and activities. From time to time parents are obligated to attend events such as teacher conferences, school plays, pageants, sporting events, and other activities. Agencies should be flexible in granting leave for these occasions. Annual leave and leave without pay for appropriate for these activities.

b. Sitters. Young children of a single working parent or a working couple are usually placed in some kind of day care situation outside the home. Some children are placed with a sitter, rather than in a day care center. Sitters get sick, need time off for personal reasons, and have emergencies. This means that the working parent may have no alternative but to stay home with the child. Annual leave and leave without pay are appropriate for this purpose.

c. Elderly parents and other dependents. We should not forget that among the more typical family responsibilities is the care for the elderly and the infirm. There will be times when employees will need time off to attend to the medical and personal needs of these dependents. Annual leave and leave without pay are appropriate for this purpose.

U.S. Postal Service,
Law Department,
Washington, DC, January 5, 1988.

Hon. William D. Ford,
Chairman, Committee on Post Office, and Civil Service,
House of Representatives, Washington, DC.

Dear Mr. Chairman: This responds to your request for the views of the Postal Service on H.R. 925, the proposed "Family and Medical Leave Act of 1987." Our comments are limited to Title I of the bill since those provisions, as opposed to the civil service requirements set forth in Title II, would apply to the Postal Service.

This legislation proposes to create a new statutory right for certain employees to take leave for reasons related to the birth or adoption of a child, or certain health problems of the employee, his children or parents.[1] In our opinion, the enactment of this type of statutory entitlement would aggravate what is already one of the greatest employee-related operational problems confronting employers; namely, anticipating varying workloads and ensuring that the right number of employees are scheduled each day and, in fact, report to work.

Under the proposed family leave provisions, an individual would seemingly be guaranteed the right to be absent from work on an intermittent and unscheduled basis for reasons related to the health problems of family members. Unscheduled absences by employees due to personal illness, last-minute personal circumstances, or simply no reason at all, can cause substantial problems in an organization like the Postal Service where the basic operation of processing and delivering the mail does not lend itself to postponing work until a more "convenient" time is found for it to be performed. When an employee does not report as scheduled, someone else with the requisite skills to get the job done must be found at the last minute, often by calling an individual into work on his or her day off. If a replacement cannot be found, the workday may have to be extended for other employees who must do their own jobs as well as the work of the absent employee. Creating a right to be absent, often in last-minute circumstances, would allow absent employees to burden other employees and would place a substantial constraint on the Postal Service's ability to meet its operational requirements.

Closely related to the operational difficulties this legislation would create are the likely financial consequences of its passage. Stated simply, the labor costs associated with moving the nation's mail would undoubtedly increase. Unexpected and extended absences of experienced postal workers would require the hiring of additional personnel, and consequently the costs associated with employee benefits could be expected to rise. To ensure the availability of a sufficient number of qualified replacements to fill in for absent employees, a greater investment in employee training would likely be required as well. In addition, salary costs would increase since many of the absences the bill would authorize, particularly those taken on an intermittent and unscheduled basis, would have to be covered by employees paid at overtime rates.

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[1] As introduced, H.R. 925 would grant eligible employees up to 18 workweeks of family leave during any 24-month period, and up to 26 workweeks of temporary medical leave for "serious health conditions" during any 12-month period. The House Committee on Education and Labor, however, amended the measure to, among other things, limit the amount of family leave an eligible employee could take during any 24-month period to 10 workweeks, and the amount of temporary medical leave to 15 weeks over one year.

We are also concerned that the procedural aspects of the bill would pose serious problems of potential abuse and expensive litigation. Entitlement to the proposed benefits involves certain standards which would require an employer to exercise judgment in approving or disapproving a leave request in some circumstances. For example, the temporary medical leave would be available only if a medical condition renders an employee "unable to perform the functions of such employee's position."

Inasmuch as entitlement to the proposed benefits may not be clear-cut in many cases, we are concerned that the civil enforcement provisions of the bill could invite unnecessary and expensive litigation. Proposed section 108(a), for example, would make it unlawful for an employer "to interfere with, restrain, or deny the exercise of or the attempt to exercise," any right established by the bill. This provision could subject the employer to the risk of litigation and potential penalties should it seek to deny a leave request which it believes may not be justified. We believe that employers require the right to assure that leave benefits are exercised properly and to discipline employees for leave abuse.

The bill generally would grant an employee who believes his rights under the legislation have been violated the option of seeking administrative enforcement through the Secretary of Labor or of seeking immediate relief in Federal or State court. Allowing an individual to go directly to court would likely lessen the aggrieved individual's incentive to attempt to resolve a problem administratively. This, in turn, would deprive the employer of the opportunity to investigate and resolve the matter before incurring the costs associated with litigation.

In our opinion, it would be inappropriate to apply the dual enforcement scheme, which is taken from the Fair Labor Standards Act, to the administration of an employee leave benefit program. It would lead to substantial additional costly litigation and add to the already heavily burdened dockets of the Federal courts. Simpler procedures for enforcing other labor laws, such as those of the National Labor Relations Board, 29 U.S.C. 160, still afford full protection of employee rights while minimizing the possibility of abuse.

Finally, we are concerned that insofar as it would appear to create employee rights in the areas of leave, seniority, job ownership and placement, the bill addresses areas which are clearly subjects for collective bargaining under the National Labor Relations Act. In some situations, H.R. 925 would negate the provisions of existing collective bargaining agreements entered into in good faith by employers and unions, and create new rights not bargained for. This would disrupt the balance already struck in collective bargaining agreements by imposing altered working conditions on parties who had reached agreement through the negotiating process. The creation of a dispute resolution process in the Department of Labor and the courts outside the collective bargaining relationship would seem to further undercut that relationship.

For the reasons stated, the Postal Service recommends against enactment of the legislation.

Sincerely,

FRED EGGLESTON,
Assistant General Counsel,
Legislative Division.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted in enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

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§ 2105. Employee

(a) * * *

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(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws (other than subchapter IV of chapter 53, *and subchapter III of chapter 63,* of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title, and sections 5550 and 7204 of this title) administered by the Office of Personnel Management; or

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Subpart E—Attendance and Leave

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CHAPTER 63—LEAVE

SUBCHAPTER I—ANNUAL AND SICK LEAVE

Sec.
6301. Definitions.
6302. General provisions.
6303. Annual leave; accrual.
6304. Annual leave; accumulation.
6305. Home leave; leave for Chiefs of Missions; leave for crews of vessels.
6306. Annual leave; refund of lump-sum payment; recredit of annual leave.
6307. Sick leave; accrual and accumulation.
6308. Transfers between positions under different leave systems.
[6309. Repealed.]
6310. Leave of absence; aliens.
6311. Regulations.
6312. Accrual and accumulation for former ASCS county office employees.

SUBCHAPTER II—OTHER PAID LEAVE

6321. Absence of veterans to attend funeral services.
6322. Leave for jury or witness service; official duty status for certain witness service.
6323. Military leave; Reserves and National Guardsmen.
6324. Absence of certain police and firemen.
6325. Absence resulting from hostile action abroad.
6326. Absence in connection with funerals of immediate relatives in the Armed Forces.

SUBCHAPTER III—FAMILY AND TEMPORARY MEDICAL LEAVE

6331. Definitions.
6332. Family leave.
6333. Temporary medical leave.
6334. Certification.
6335. Job protection.
6336. Prohibition of coercion.
6337. Health insurance.
6338. Regulations.

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Subchapter III—Family and Temporary Medical Leave

§ 6331. Definitions

For purposes of this subchapter—

(1) "employee" means—

(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

(B) an individual under clause (v) or (ix) of such section; whose employment is other than on a temporary or intermittent basis;

(2) "serious health condition" means an illness, injury, impairment, or physical or mental condition which involves—

(A) inpatient care in a hospital, hospice, or residential health care facility; or

(B) continuing treatment, or continuing supervision, by a health care provider;

(3) "child" means an individual who is--

(A) a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, and

(B)(i) under 18 years of age, or

(ii) 18 years of age or older and incapable of self-care because of mental or physical disability; and

(4) "parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

§ 6332. Family leave

(a) Leave under this section shall be granted on the request of an employee if such leave is requested—

(1) because of the birth of a child of the employee;

(2) because of the placement for adoption or foster care of a child with the employee; or

(3) in order to care for the employee's child or parent who has a serious health condition.

(b) Leave under this section—

(1) shall be leave without pay;

(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

(c) An employee may elect to use leave under this section—

(1) immediately before or after (or otherwise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee:

(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

(3) on either a continuing or intermittent basis; or

(4) any combination thereof.

(d) Notwithstanding any other provision of this section—

(1) a request for leave under this section based on the birth of a child may not be granted if, or to the extent that, such leave would be used after the end of the 12-month period beginning on the date of such child's birth; and

(2) a request for leave under this section based on the placement for adoption or foster care of a child may not be granted if, or to the extent that, such leave would be used after the end of the 12-month period beginning on the date on which such child is so placed.

(e)(1) In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the employee shall provide the employing agency with prior notice of such expected birth or adoption in a manner which is reasonable and practicable.

(2) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee's child or parent; and

(B) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

§ 6333. Temporary medical leave

(a) An employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position shall, on request of the employee, be entitled to leave under this section.

(b) Leave under this section—

(1) shall be leave without pay;

(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

(3) shall be in addition to any annual leave, sick leave, family leave, or other leave or compensatory time off otherwise available to the employee.

(c) An employee may elect to use leave under this section—

(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

(3) on either a continuing or intermittent basis; or

(4) any combination thereof.

(d) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

(1) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the employee's health care provider; and

(2) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

§ 6334. Certification

(a) An employing agency may require that a request for family leave under section 6332(a)(3) or temporary medical leave under section 6333 be supported by certification issued by the health care provider of the employee or of the employee's child or parent, whichever is appropriate. The employee shall provide a copy of such certification to the employing agency.

(b) Such certification shall be sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the medical facts within the provider's knowledge regarding the condition; and

(4) for purposes of section 6333, a statement that the employee is unable to perform the functions of the employee's position.

§ 6335. Job protection

An employee who uses leave under section 6332 or 6333 of this title is entitled to be restored to the position held by such employee immediately before the commencement of such leave.

§ 6336. Prohibition of coercion

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with such employee's rights under this subchapter.

(b) For the purpose of this section, "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 6337. Health insurance

An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6332 or 6333 of this title may elect to continue the employee's health benefits enrollment while in such leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through that individual's employing agency, the appropriate employee contributions.

§ 6338. Regulations

The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Family and Medical Leave Act of 1988.

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100TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 100-511
Part 2

FAMILY AND MEDICAL LEAVE ACT OF 1988

MARCH 9, 1988.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HAWKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

MINORITY, SUPPLEMENTAL, ADDITIONAL DISSENTING, AND ADDITIONAL VIEWS

[To accompany H.R. 925 which on February 3, 1987, was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 925) to entitle employees to family leave in certain cases involving a birth, an adoption, or a serious health condition and to temporary medical leave in certain cases involving a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Family and Medical Leave Act of 1988."

(b) TABLE OF CONTENTS.—

83-013

TITLE I—GENERAL REQUIREMENTS FOR FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE

Sec. 101. Definitions.
Sec. 102. Inapplicability.
Sec. 103. Family leave requirement.
Sec. 104. Temporary medical leave requirement.
Sec. 105. Certification.
Sec. 106. Employment and benefits protection.
Sec. 107. Prohibited acts.
Sec. 108. Administrative enforcement.
Sec. 109. Enforcement by civil action.
Sec. 110. Investigative authority.
Sec. 111. Relief.
Sec. 112. Notice.

TITLE II—PARENTAL LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

Sec. 201. Parental and temporary medical leave.

TITLE III—COMMISSION ON FAMILY AND MEDICAL LEAVE

Sec. 301. Establishment.
Sec. 302. Duties.
Sec. 303. Membership.
Sec. 304. Compensation.
Sec. 305. Powers.
Sec. 306. Termination.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Effect on other laws.
Sec. 402. Effect on existing employment benefits.
Sec. 403. Encouragement of more generous leave policies.
Sec. 404. Regulations.
Sec. 405. Effective dates.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly;

(2) it is important to the development of the child and to the family unit that fathers and mothers be able to participate in early childrearing and the care of their children who have serious health conditions;

(3) the lack of employment opportunities to accommodate working parents can force individuals to choose between job security and parenting;

(4) there is inadequate job security for some employees who have serious health conditions that prevent them from working for temporary periods;

(5) due to the nature of women's and men's roles in our society, the primary responsibility for family caretaking often falls on women, and such responsibility affects their working lives more than if affects the working lives of men; and

(6) employment standards that apply to one gender only have serious potential for encouraging employers to discriminate against employees and applicants for employment who are of that gender.

(b) PURPOSES.—The Congress therefore declares that the purposes of this Act are—

(1) to balance the demands of the workplace with the needs of families, to promote stability and economic security in families, and to promote Federal interests in preserving family integrity;

(2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child or parent who has a serious health condition;

(3) to accomplish such purposes in a manner which accommodates the legitimate interests of employers;

(4) to accomplish such purposes in a manner which, consistent with the Equal Protection Clause of the Fourteenth Amendment, minimizes the potential for discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons, on a gender-neutral basis; and

(5) to promote the goal of equal employment opportunity for women and men, pursuant to such clause.

TITLE I—GENERAL REQUIREMENTS FOR FAMILY LEAVE AND MEDICAL LEAVE

SEC. 101. DEFINITIONS.

For purposes of this title the following terms have the following meanings:

(1) The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947 (29 U.S.C 141 et seq.).

(2) The terms "employ", "person", and "State" have the meanings given such terms in sections 3(g), 3(a), and 3(c), respectively, of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(g), 203(a), 203(c)).

(3)(A) The term "eligible employee" means any employee as defined in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)) who has been employed by the employer with respect to whom benefits are sought under this section for at least—

(i) 1,000 hours of service during the previous 12-month period, and

(ii) 12 months.

(B) Such term does not include any Federal officer or employee covered under subchapter III of chapter 63 of title 5, United States Code (as added by title II of this Act).

(4) The term "employee" means any individual employed by an employer.

(5)(A) The term "employer" means any person engaged in commerce or any activity affecting commerce who—

(i) during the 3-year period beginning after the effective date of this title, employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year; or

(ii) after such period, employs 35 of more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

(B) For purposes of subparagraph (A), the term "person" includes, among other things—

(i) any person who acts, directly or indirectly, in the interest of an employer to any of the employer's employees,

(ii) any successor in interest of an employer; and

(iii) any public agency, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)).

(C) For purposes of subparagraph (A), a public agency shall be deemed to be a person engaged in commerce or in an activity affecting commerce.

(6) The term "employment benefits" means all benefits provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a policy or practice of an employer or through an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

(7) The term "health care provider" means—

(A) any person licensed under Federal, State, or local law to provide health care services, or

(B) any other person determined by the Secretary to be capable of providing health care services.

(8) The term "reduced leave schedule" means leave schedule for fewer than an employee's usual number of hours per workweek or hours per workday.

(9) The term "Secretary" means the Secretary of Labor.

(10) The term "serious health condition" means an illness, injury, impairment, or physical or mental conditions which involves—

(A) inpatient care in a hospital, hospice, or residential health care facility, or

(B) continuing treatment or continuing supervision by a health care provider.

(11) The term "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age, or

(B) 18 years of age or older and incapable of self-care because of mental or physical disability.

(12) The term "parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

SEC. 102. INAPPLICABILITY.

The rights provided under this title shall not apply—

(1) during the 3-year period beginning after the effective date of this title, with respect to employees of any facility of an employer at which fewer than 50 employees are employed, and when the combined number of employees employed by the employer within 75 miles of the facility is fewer than 50; and

(2) after such period, with respect to employees of any facility of an employer at which fewer than 35 employees are employed, and when the combined number of employees employed by the employer within 75 miles of the facility is fewer than 35.

SEC. 103. FAMILY LEAVE REQUIREMENT.

(a) **In General.**—(1) An eligible employee shall be entitled, subject to section 105, to 10 workweeks of family leave during any 24-month period—

(A) because of the birth of a son or daughter of the employee,

(B) because of the placement of a son or daughter with the employee for adoption or foster care, or

(C) in order to care for the employee's son, daughter, or parent who has a serious health condition.

(2) The entitlement to leave under paragraphs (1)(A) and (1)(B) shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(3) In the case of a son, daughter, or parent, who has a serious health condition, such leave may be taken intermittently when medically necessary, subject to subsection (e).

(b) **Reduced Leave.**—Upon agreement between the employer and the employee, leave under this section may be taken on a reduced leave schedule, however, such reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled.

(c) **Unpaid Leave Permitted.**—Leave under this section may consist of unpaid leave, except as provided in subsection (d).

(d) **Relationship to Paid Leave.**—(1) If an employer provides paid family leave for fewer than 10 workweeks, the additional weeks of leave added to attain the 10-workweek total may be unpaid.

(2) An eligible employee or employer may elect to substitute any of the employee's paid vacation leave, personal leave, or family leave for any part of the 10-week period.

(e) **Foreseeable Leave.**—(1) In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the employee shall provide the employer with prior notice of such expected birth or adoption in a manner which is reasonable and practicable.

(2) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the eligible employee—

(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee's son, daughter, or parent, and

(B) shall provide the employer with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

(f) **Spouses Employed by the Same Employer.**—In any case in which a husband and wife entitled to family leave under this section are employed by the same employer, the aggregate number of workweeks of family leave to which both may be entitled may be limited to 10 workweeks during any 24-month period, if such leave is taken—

(1) under subparagraph (A) or (B) of subsection (a)(1); or

(2) to care for a sick parent under subparagraph (C) of such subsection.

SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.

(a) **In General.**—(1) Any eligible employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position, shall be entitled, subject to section 105, to temporary medical leave. Such entitlement shall continue for as long as the employee is unable to perform such functions, except that it shall not exceed 15 workweeks during any 12-month period.

(2) Such leave may be taken intermittently when medically necessary, subject to subsection (d).

(b) **Unpaid Leave Permitted.**—Such leave may consist of unpaid leave, except as provided in subsection (c).

(c) **Relationship to Paid Leave.**—(1) If an employer provides paid temporary medical leave or paid sick leave for fewer than 15 weeks, the additional weeks of leave added to attain the 15-week total may be unpaid.

(2) An eligible employee or employer may elect to substitute the employee's accrued paid vacation leave, sick leave, or medical leave for any part of the 15-week

period, except that nothing in this Act shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave.

(d) Foreseeable Leave.—In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

(1) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the employee's health care provider, and

(2) shall provide the employer with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

SEC. 105. CERTIFICATION.

(a) In General.—An employer may require that a claim for family leave under section 103(a)(1)(C), or temporary medical leave under section 104, be supported by certification issued by the health care provider of the eligible employee or of the employee's son, daughter, or parent, whichever is appropriate. The employee shall provide a copy of such certification to the employer.

(b) Sufficient Certification.—Such certification shall be sufficient if it states—

(1) the date on which the serious health condition commenced,

(2) the probable duration of the condition,

(3) the appropriate medical facts within the provider's knowledge regarding the condition, and

(4)(A) for purposes of leave under section 104, a statement that the employee is unable to perform the functions of the employee's position; and

(B) for purposes of leave under section 103(a)(1)(C), an estimate of the amount of time that the eligible employee is needed to care for the son, daughter, or parent.

(c) Explanation of Inability to Perform Job Functions.—The employer may request that for purposes of section 106(d) certification under this section that is issued in any case involving leave under section 104 include an explanation of the extent to which the eligible employee is unable to perform the functions of the employee's position.

(d) Second Opinion.—(1) In any case in which the employer has reason to doubt the validity of the certification provided under subsection (a), the employer may require, at its own expense, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (b).

(2) Any health care provider designated or approved under paragraph (1) may not be employed on a regular basis by the employer.

(e) Subsequent Recertification.—The employer may require that the eligible employee obtain subsequent recertifications on a reasonable basis.

SEC. 106. EMPLOYMENT AND BENEFITS PROTECTION.

(a) Restoration to Position.—(1) Any eligible employee who takes leave under section 103 or 104 for its intended purpose shall be entitled, upon return from such leave—

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced, or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) The taking of leave under this title shall not result in the loss of any employment benefit earned before the date on which the leave commenced.

(3) Except as provided in subsection (b), nothing in this section shall be construed to entitle any restored employee to—

(A) the accrual of any seniority or employment benefits during any period of leave, or

(B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(4) As a condition to restoration under paragraph (1), the employer may have a policy that requires each employee to receive certification from the employee's health care provider that the employee is able to resume work.

(b) Exemption Concerning Certain Highly Compensated Employees.—(1) An employer may deny restoration under this subsection to any eligible employee described in paragraph (2) if—

(A) such denial is necessary to prevent substantial and greivous economic injury to the employer's operations,

(B) the employer notifies the employee of its intent to deny restoration on such basis at the time the employer determines that such injury would occur, and

(C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.

(2) An eligible employee described in this paragraph is a salaried eligible employee who is among the—

(A) highest paid 10 percent of employees, or

(B) 5 highest paid employees,

whichever is greater, of the employees employed by the employer within 75 miles of the facility at which the employee is employed.

(c) MAINTENANCE OF HEALTH BENEFITS.—During any period an eligible employee takes leave under section 103 or 104, the employer shall maintain coverage under any group health plan (as defined in section 162(i)(3) of the Internal Revenue Code of 1954) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date the employee is restored under subsection (a).

(d) NO BAR TO AGREEMENT CONCERNING ALTERNATIVE EMPLOYMENT.—Nothing in this title shall be construed to prohibit an employer and an eligible employee from mutually agreeing to alternative employment for the employee throughout the period during which the employee would be entitled to leave under this title. Any such period of alternative employment shall not cause a reduction in the period of temporary medical leave to which the employee is entitled under section 104.

SEC. 107. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.—(1) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title,

(2) has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this title, or

(3) has testified, or is about to testify in any inquiry or proceeding relating to any right provided under this title.

SEC. 108. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—The Secretary shall issue such rules and regulations as are necessary to carry out this section, including rules and regulations concerning service of complaints, notice of hearings, answers and amendments to complaints, and copies of orders and records of proceedings.

(b) CHARGES.—(1) Any person (or person, including a class or organization, on behalf of any person) alleging an act which violates any provision of this title may file a charge respecting such violation with the Secretary. Charges shall be in such form and contain such information as the Secretary shall require by regulation.

(2) Not more than 10 days after the Secretary receives notice of the charge, the Secretary—

(A) shall serve a notice of the charge on the person charged with the violation, and

(B) shall inform such person and the charging party as to the rights and procedures provided under this title.

(3) A charge may not be filed more than 1 year after the date of the last event constituting the alleged violation.

(4) The charging party and the person charged with the violation may enter into a settlement agreement concerning the violation alleged in the charge before any determination is reached by the Secretary under subsection (c). Such an agreement shall be effective unless the Secretary determines, within 30 days after notice of the proposed agreement, that the agreement is not generally consistent with the purposes of this title.

(c) INVESTIGATION; COMPLAINT.—(1) Within the 60-day period after the Secretary receives any charge, the Secretary shall investigate the charge and issue a complaint based on the charge or dismiss the charge.

(2) If the Secretary determines that there is no reasonable basis for the charge, the Secretary shall dismiss the charge and promptly notify the charging party and the respondent as to the dismissal.

(3) If the Secretary determines that there is a reasonable basis for the charge, the Secretary shall issue a complaint based on the charge and promptly notify the charging party and the respondent as to the issuance.

(4) Upon the issuance of a complaint, the Secretary and the respondent may enter into a settlement agreement concerning a violation alleged in the complaint. Any such settlement shall not be entered into over the objection of the charging party, unless the Secretary determines that the settlement provides a full remedy for the charging party.

(5) If, at the end of the 60-day period referred to in paragraph (1), the Secretary—

(A) has not made a determination under paragraph (2) or (3),

(B) has dismissed the charge under paragraph (2), or

(C) has disapproved a settlement agreement under subsection (b)(4) or has not entered into a settlement agreement under paragraph (4) of this subsection,

the charging party may elect to bring a civil action under section 109. Such election shall bar further administrative action by the Secretary with respect to the violation alleged in the charge.

(6) The Secretary may issue and serve a complaint alleging a violation of this title on the basis of information and evidence gathered as a result of an investigation initiated by the Secretary pursuant to section 110.

(7) The Secretary shall have the power to petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition, the court shall cause notice of the petition to be served upon the respondent, and the court shall have jurisdiction to grant to the Secretary such temporary relief or restraining order as it deems just and proper.

(d) Rights of Parties.—(1) In any case in which a complaint is issued under subsection (c), the Secretary shall, not more than 10 days after the date on which the complaint is issued, cause to be served on the respondent a copy of the complaint.

(2) Any person filing a charge alleging a violation of this title may elect to be a party to any complaint filed by the Secretary alleging such violation. Such election must be made before the commencement of the hearing.

(3) The failure of the Secretary to comply in a timely manner with any obligation assigned to the Secretary under this title shall entitle the charging party to elect, at the time of such failure, to bring a civil action under section 109.

(e) Conduct of Hearing.—(1) the Secretary shall have the duty to prosecute any complaint issued under subsection (b).

(2) An administrative law judge shall conduct a hearing on the record with respect to any complaint issued under this title. The hearing shall be commenced within 60 days after the issuance of such complaint, unless the judge, in the judge's discretion, determines that the purposes of this Act would best be furthered by commencement of the action after the expiration of such period.

(f) Findings and Conclusions.—(1) After the hearing conducted under this section, the administrative law judge shall promptly make findings of fact and conclusions of law, and, if appropriate, issue an order for relief as provided in section 111.

(2) The administrative law judge shall inform the parties, in writing, of the reason for any delay in making such findings and conclusions if such findings and conclusions are not made within 60 days after the conclusion of such hearing.

(g) Finality of Decision; Review.—(1) The decision and order of the administrative law judge shall become the final decision and order of the agency unless, upon appeal by an aggrieved party taken not more than 30 days after such action, the Secretary modifies or vacates the decision, in which case the decision of the Secretary shall be the final decision and the order of the agency.

(2) Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(3) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) Court Enforcement of Administrative Orders.—(1) If an order of the agency is not appealed under subsection (g)(2), the Secretary may petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the Secretary, by filing in such court a written petition praying that such order be enforced.

(2) Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the Secretary. In such a proceeding, the order of the Secretary shall not be subject to review.

(3) If, upon appeal of an order under subsection (g)(2), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the Secretary.

SEC. 109. ENFORCEMENT BY CIVIL ACTION.

(a) Right To Bring Civil Action.—(1) Subject to the limitations in this section, an eligible employee or any person, including a class or organization on behalf of any eligible employee or the Secretary may bring a civil action against any employer (including any State employer) to enforce the provisions of this title in any appropriate court of the United States or in any State court of competent jurisdiction.

(2) Subject to paragraph (3), a civil action may be commenced under this subsection without regard to whether a charge has been filed under section 108(b).

(3) No civil action may be commenced under paragraph (1) if the Secretary—

(A) has approved a settlement agreement or has failed to disapprove a settlement agreement under section 108(b)(4), in which case no civil action may be filed under this subsection if such action is based upon a violation alleged in the charge and resolved by the agreement, or

(B) has issued a complaint under section 108(c)(3) or 108(c)(6), in which case no civil action may be filed under this subsection if such action is based upon a violation alleged in the complaint.

(4) Notwithstanding paragraph (3)(A), a civil action may be commenced to enforce the terms of any such settlement agreement.

(5)(A) Except as provided in subparagraph (B), no civil action may be commenced more than 1 year after the date of the last event constituting the alleged violation.

(B) In any case in which—

(i) a timely charge is filed under section 108(b), and

(ii) the failure of the Secretary to issue a complaint or enter into a settlement agreement based on the charge (as provided under section 108(c)(4)) occurs more than 11 months after the date on which any alleged violation occurred,

the charging party may commence a civil action not more than 60 days after the date of such failure.

(6) The Secretary may not bring a civil action against any agency of the United States.

(7) Upon the filing of the complaint with the court, the jurisdiction of the court shall be exclusive.

(b) Venue.—An action brought under subsection (a) in a district court of the United States may be brought—

(1) in any appropriate judicial district under section 1391 of title 28, United States Code, or

(2) in the judicial district in the State in which—

(A) the employment records relevant to such violation are maintained and administered; or

(B) the aggrieved person worked or would have worked but for the alleged violation.

(c) Notification of the Secretary; Right To Intervene.—A copy of the complaint in any action by an eligible employee under subsection (a) shall be served upon the Secretary by certified mail. The Secretary shall have the right to intervene in a civil action brought by an employee under subsection (a).

(d) Attorneys for the Secretary.—In any civil action under subsection (a), attorneys appointed by the Secretary may appear for and represent the Secretary, except that the Attorney General and the Solicitor General shall conduct any litigation in the Supreme Court.

SEC. 110. INVESTIGATIVE AUTHORITY.

(a) In General.—To ensure compliance with the provisions of this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c), the investigative authority provided under section 11(a) of the Fair Labor Standards Act (29 U.S.C. 211(a)).

(b) Obligation To Keep and Preserve Records.—Any employer shall keep and preserve records in accordance with section 11(c) of such Act and in accordance with regulations issued by the Secretary.

(c) **Required Submissions Generally Limited to an Annual Basis.**—The Secretary may not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 108.

(d) **Subpoena Powers, Etc.**—For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided under section 9 of the Fair Labor Standards Act.

SEC. 111. RELIEF.

(a) **Injunctive.**—(1) Upon finding a violation under section 108, the administrative law judge shall issue an order requiring such person to cease and desist from any act or practice which violates this title.

(2) In any civil action brought under section 109, the court may grant as relief against any employer (including any State employer) any permanent or temporary injunction, temporary restraining order, and other equitable relief as the court deems appropriate.

(b) **Monetary.**—(1) Any employer (including any State employer) that violates any provision of this title shall be liable to the injured party in an amount equal to—

(A) any wages, salary, employment benefits, or other compensation denied or lost to such eligible employee by reason of the violation, plus interest on the total monetary damages calculated at the prevailing rate, and

(B) an additional amount equal to the greater of (i) the amount determined under subparagraph (A), or (ii) consequential damages, not to exceed 3 times the amount determined under such subparagraph.

(2) If an employer who has violated this title proves to the satisfaction of the court that the act or omission which violated this title was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this title, the court may, in its discretion, reduce the amount of the liability or penalty provided for under this subsection to the amount determined under paragraph (1)(A).

(c) **Attorneys' Fees.**—The prevailing party (other than the United States) may be awarded a reasonable attorneys' fee as part of the costs, in addition to any relief awarded. the United States shall be liable for costs the same as a private person.

(d) **Limitation.**—Damages awarded under subsection (b) may not accrue from a date more than 2 years before the date on which a charge is filed under section 108(b) or a civil action is brought under section 109.

SEC. 112. NOTICE.

(a) **In General.**—Each employer shall post and keep posted, in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) **Penalty.**—Any employer that willfully violates this section shall be assessed a civil money penalty not to exceed $100 for each separate offense.

TITLE II—FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

SEC. 201. FAMILY AND TEMPORARY MEDICAL LEAVE.

(a) **In General.**—(1) Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER III—FAMILY AND TEMPORARY MEDICAL LEAVE

"§ 6331. Definitions

"For purposes of this subchapter—

"(1) 'employee' means—

"(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

"(B) an individual under clause (v) or (ix) of such section;

whose employment is other than on a temporary or intermittent basis;

"(2) 'serious health condition' means an illness, injury, impairment, or physical or mental condition which involves—

"(A) inpatient care in a hospital, hospice, or residential health care facility; or

"(B) continuing treatment, or continuing supervision, by a health care provider;

"(3) 'child' means an individual who is—

"(A) a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, and

"(B)(i) under 18 years of age, or

"(ii) 18 years of age or older and incapable of self-care because of mental or physical disability; and

"(4) 'parent' means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

"§ 6332. Family leave

"(a) Leave under this section shall be granted on the request of an employee if such leave is requested—

"(1) because of the birth of a child of the employee;

"(2) because of the placement for adoption or foster care of a child with the employee; or

"(3) in order to care for the employee's child or parent who has a serious health condition.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

"(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"(d)(1) In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the employee shall provide the employing agency with prior notice of such expected birth or adoption in a manner which is reasonable and practicable.

"(2) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

"(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee's child or parent; and

"(B) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

"§ 6333. Temporary medical leave

"(a) An employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position shall, on request of the employee, be entitled to leave under this section.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

"(3) shall be in addition to any annual leave, sick leave, family leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"(d) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

"(1) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the employee's health care provider; and

"(2) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

"§ 6334. Certification

"(a) An employing agency may require that a request for family leave under subsection (a)(3) or (a)(4) of section 6332 or temporary medical leave under section 6333 be supported by certification issued by the health care provider of the employee or of the employees' child or parent, whichever is appropriate. The employee shall provide a copy of such certification to the employing agency.

"(b) Such certification shall be sufficient if it states—

"(1) the date on which the serious health condition commenced;

"(2) the probable duration of the condition;

"(3) the medical facts within the provider's knowledge regarding the condition; and

"(4) for purposes of section 6333, a statement that the employee is unable to perform the functions of the employee's position.

"§ 6335. Job protection

"An employee who uses leave under section 6332 or 6333 of this title is entitled to be restored to the position held by such employee immediately before the commencement of such leave.

"§ 6336. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with such employee's rights under this subchapter.

"(b) For the purpose of this section, 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6337. Health insurance

"An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6332 or 6333 of this title may elect to continue the employee's health benefits enrollment while in such leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through that individual's employing agency, the appropriate employee contributions.

"§ 6338. Regulations

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Family and Medical Leave Act of 1987.".

(2) The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER III—FAMILY AND TEMPORARY MEDICAL LEAVE

"6331. Definitions.
"6332. Family leave.
"6333. Temporary medical leave.
"6334. Certification.
"6335. Job protection.
"6336. Prohibition of coercion.
"6337. Health insurance.
"6338. Regulations.".

(b) Employees Paid From Nonappropriated Funds.—Section 2105(c)(1) of title 5, United States Code, is amended by striking out "53" and inserting in lieu thereof "53, subchapter III of chapter 63,".

TITLE III—COMMISSION ON PAID FAMILY AND MEDICAL LEAVE

SEC. 301. ESTABLISHMENT.

There is established a commission to be known as the Commission on Paid Family and Medical Leave (hereinafter in this title referred to as the "Commission").

SEC. 302. DUTIES.

The Commission shall—

(1) conduct a comprehensive study of—

(A) existing and proposed policies relating to family leave and temporary medical leave; and

(B) the potential costs, benefits, and impact on productivity of such policies on businesses which employ fewer than 50 employees.

(2) within 2 years after the date on which the Commission first meets, submit a report to the Congress, which may include legislative recommendations concerning coverage of businesses which employ fewer than 50 employees.

SEC. 303. MEMBERSHIP.

(a) COMPOSITION.—The Commission shall be composed of 12 voting members and 2 ex-officio members appointed not more than 60 days after the date of the enactment of this Act as follows:

(1) One Senator shall be appointed by the majority leader of the Senate, and one Senator shall be appointed by the minority leader of the Senate.

(2) One member of the House of Representatives shall be appointed by the Speaker of the House of Representatives, and one Member of the House of Representatives shall be appointed by the minority leader of the House of Representatives.

(3)(A) Two members each shall be appointed by—

(i) the Speaker of the House of Representatives,

(ii) the majority leader of the Senate,

(iii) the minority leader of the House of Representatives, and

(iv) the minority leader of the Senate.

(B) Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor-management issues and shall include representatives of small business.

(4) The Secretary of Health and Human Services and the Secretary of Labor shall serve on the Commission as nonvoting ex-officio members.

(b) VACANCIES.—Any vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(c) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall elect a chairperson and a vice chairperson from among its members.

(d) QUORUM.—Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

SEC. 304. COMPENSATION.

(a) PAY.—Members of the Commission shall serve without compensation.

(b) TRAVEL EXPENSES.—Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Commission.

SEC. 305. POWERS.

(a) MEETINGS.—The Commission shall first meet not more than 30 days after the date on which members are appointed, and the Commission shall meet thereafter upon the call of the chairperson or a majority of the members.

(b) HEARINGS AND SESSIONS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this Act. Upon the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

(d) EXECUTIVE DIRECTOR.—The Commission may appoint an Executive Director from the personnel of any Federal agency to assist the Commission in carrying out its duties.

(e) USE OF FACILITIES AND SERVICES.—Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.

(f) PERSONNEL FROM OTHER AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to assist the Commission in carrying out its duties.

SEC. 306. TERMINATION.

The Commission shall terminate 30 days after the date of the submission of its report to the Congress.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON OTHER LAWS.

(a) FEDERAL AND STATE ANTIDISCRIMINATION LAWS.—Nothing in this Act shall be construed to modify or affect any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or handicapped status.

(b) STATE AND LOCAL LAWS.—Nothing in this Act shall be construed to supersede any provision of any State and local law which provides greater employee family or medical leave rights than the rights established under this Act.

SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.—Nothing in this Act shall be construed to diminish an employer's obligation to comply with any collective-bargaining agreement or any employment benefit program or plan which provides greater family and medical leave rights to employees than the rights provided under this Act.

(b) LESS PROTECTIVE.—The rights provided to employees under this Act may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES.

Nothing in this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies which comply with the requirements under this Act.

SEC. 404. REGULATIONS.

The Secretary shall prescribe such regulations as are necessary to carry out title I of this Act, within 60 days after the date of the enactment of this Act.

SEC. 405. EFFECTIVE DATES.

(a) TITLE III.—Title III shall take effect on the date of the enactment of this Act.

(b) OTHER TITLES.—(1) Except as provided in paragraph (2), titles I, II, and IV shall take effect 6 months after the date of the enactment of this Act.

(2) In the case of a collective bargaining agreement in effect on the effective date of paragraph (1), title I shall apply on the earlier of—

(A) the date of the termination of such agreement, or

(B) the date which occurs 12 months after the date of the enactment of this Act.

Amend the title so as to read:

A BILL To entitle eligible employees to family leave in cases involving the birth, adoption, or serious health condition of a son, daughter, or parent, and temporary medical leave in cases involving inability to work because of a serious health condition, and to establish a commission to study such leave.

SUMMARY OF PURPOSE

The purpose of this legislation is to entitle employees to family leave in cases involving the birth, adoption or placement for foster care of a child or upon the serious health condition of a child or parent. It also seeks to provide temporary medical leave to employees in cases involving the inability to perform the functions of one's position because of a serious health condition. The bill provides employment and benefit protection to employees during the leave period. The bill also establishes a commission to study the effects of such leave, particularly on small businesses.

INTRODUCTION

H.R. 925 addresses a profound change in the composition of the workforce that has had a dramatic effect on families. Sixty percent of all mothers are currently in the labor force, which is three times what it was thirty years ago. In the great majority of families today, all of the adult members work. The role of the family as primary nurturer and care-giver has been fundamentally affected by a new economic reality. Families are struggling to find a way to carry out the traditional role of bearing and caring for children and providing the emotional and physical support to their members during times of greatest need. When families fail to carry out these critical functions, the societal costs are enormous.

In order to help families cope with the new work place reality, H.R. 925 establishes a minimum standard that assures employees the availability of unpaid leave with job protection under special circumstances. It makes available to employees, up to ten weeks of leave over a two year period, to care for a newly born or adopted child, or to care for an employee's child or parent with a serious health condition. Employees are also able to take up to fifteen weeks a year of leave if they are unable to perform their jobs because of a serious health condition.

The adjustments this legislation may sometimes require of employers are offset by savings in medical and child care costs as well as the broad societal benefit of strengthened families. Employers also benefit directly from the retention of loyal and skilled employees, including savings on recruitment, hiring, and training costs and improved employee morale. Finally, the bill will help reduce the cost to both government and private charities of picking up the pieces when families fall apart.

An unpaid leave requirement is a cost effective means of dealing with the essential concern of helping families to survive. H.R. 925 is based on the belief that if families are to continue performing their care-giving role, the minimum standards for family and medical leave established in the bill are essential.

COMMITTEE ACTION

LEGISLATIVE ACTION IN THE 100TH CONGRESS

On February 3, 1987, Representatives William Clay (D-Missouri) and Patricia Schroeder (D-Colorado) introduced H.R. 925, the Family and Medical Leave Act, a bill to entitle employees to unpaid family leave in cases involving the birth or adoption of a child or the serious health condition of a child or parent. The bill has been cosponsored by 150 members of Congress. The bill also provides for temporary medical leave in cases involving an employee's inability to perform his or her job because of a serious health condition. The bill was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service.

Joint legislative hearings were conducted by the Committee on Education and Labor Subcommittees on Labor-Management Relations and Labor Standards on February 25, and March 5, 1987. Testimony was presented by members of Congress, interested individuals, public interest and civic organizations, academics, union officials and business representatives.

The Subcommittee on Labor-Management Relations favorably reported H.R. 925 by voice vote, on May 13, 1987.

On November 17, 1987, the Committee on Education and Labor ordered H.R. 925, as amended, favorably reported. The Committee approved an amendment in the nature of a substitute to H.R. 925, offered by ranking subcommittee minority member Marge Roukema (R-New Jersey), and approved the bill as amended by the substitute, by a roll call vote of 21–11 with 1 member voting present. All other amendments to H.R. 925 were rejected.

The Committee on Post Office and Civil Service Subcommittees on Civil Service and Compensation and Employee Benefits held a legislative hearing on April 2, 1987. Testimony was presented by the Office of Personnel Management, the General Accounting Office, interested individuals, academics, and federal employee union representatives. The Subcommittee on Civil Service approved H.R. 925, without amendment, by a vote of 3–0, on May 5, 1987. The Subcommittee on Compensation and Employee Benefits approved H.R. 925, without amendment, by voice vote, on May 19, 1987. The Committee on Post Office and Civil Service ordered H.R. 925 favorably reported, without amendment, by voice vote, on February 3, 1988.

In the Senate, a bill similar to the Family and Medical Leave Act, S. 249, was introduced by Senator Christopher Dodd (D-Connecticut) on January 6, 1987. The bill was referred to the Subcommittee on Children, Family, Drugs, and Alcoholism and the Subcommittee on Labor of the Committee on Labor and Human Resources. The Subcommittee on Children, Family, Drugs, and Alcoholism held seven legislative hearings on S. 249; three in Washington, D.C. on February 19, April 23, and October 29, 1987 and four regional hearings on June 15 in Boston, Massachusetts, July 20 in Los Angeles, California, September 14 in Chicago, Illinois and October 13 in Atlanta, Georgia. Testimony was presented at each of the hearings by members of Congress, interested individuals, state and local government officials, civic and advocacy organizations, academics, union officials and business representatives.

LEGISLATIVE ACTION IN THE 98TH AND 99TH CONGRESSES

Prior to the introduction of family and medical leave legislation, the Select Committee on Children, Youth and Families, during 1984, conducted a comprehensive investigation of the issues involving families and child care. The Select Committee issued a report, entitled "Families and Child Care: Improving the Options", based upon the testimony of 160 witnesses at hearings held across the country. The Select Committee unanimously recommended that Congress review improving current leave policies, including the issue of job continuity.

On April 4, 1985, Representative Patricia Schroeder introduced H.R. 2020, the Parental and Disability Leave Act of 1985. H.R. 2020 required that employees be allowed parental leave in cases involving the birth, adoption or serious illness of a child and temporary disability leave on October 17, 1985. Testimony was presented by interested individuals, government officials, public interest and civic organizations, academics, labor representatives and corporate officials.

The Education and Labor Subcommittees on Labor-Management Relations and Labor Standards and the Post Office and Civil Service Subcommittees on Civil Service and Compensation and Employee Benefits held a joint oversight hearing on the issue of parental and disability leave on October 17, 1985. Testimony was presented by interested individuals, government officials, public interest and civic organizations, academics, labor representatives and corporate officials.

On March 4, 1986, Representatives Clay and Schroeder introduced H.R. 4300, the Parental and Medical Leave Act, a bill to entitle employees to parental leave in cases involving the birth, adoption or serious health condition of a son or daughter and temporary medical leave in cases involving the inability to work because of a serious health condition. The bill superseded H.R. 2020 and was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service.

On April 9, 1986, Senator Christopher Dodd introduced S. 2278, the Parental and Medical Leave Act in the Senate. S. 2278 was referred to the Committee on Labor and Human Resources.

The Post Office and Civil Service Subcommittees on Civil Service and Compensation and Employee Benefits held a joint legislative hearing on the bill on April 9, 1986. Testimony was presented by federal government employees speaking as interested individuals, child care experts, and union representatives.

On April 22, 1986, the Education and Labor Subcommittees on Labor-Management Relations and Labor Standards held a joint legislative hearing on H.R. 4300. Testimony was presented by interested individuals, child care experts, public interest organizations, union officials, and business representatives.

On May 8, 1986, the Subcommittee on Compensation and Employee Benefits, by voice vote, ordered H.R. 4300 favorably reported. On June 11, 1986, the Committee on Post Office and Civil Service, by a roll call vote of 18-0, ordered H.R. 4300 favorably reported (H. Rept. 99-699, Part 1).

On June 12, 1986, the Subcommittee on Labor-Management Relations ordered H.R. 4300 favorably reported by a roll call vote of 8-6. On June 24, 1986, the Committee on Education and Labor ordered H.R. 4300, as amended, favorably reported. An amendment in the nature of a substitute, offered by Congresswoman Roukema, was rejected by a vote of 13-19. An amendment in the nature of a substitute, offered by Subcommittee on Labor-Management Relations Chairman Clay, was adopted by the Committee by a roll call vote of 22-10. The Committee favorably ordered reported H.R. 4300, as amended, by voice vote (H. Rept. 99-669, Part 2).

The Committee on Rules approved an open rule for floor consideration of H.R. 4300 on September 17, 1986 (H. Res. 552). The 99th Congress adjourned before any further action on H.R. 4300 was taken.

Background and Need for Legislation

Private sector practices and government policies have failed to keep pace with and respond to recent economic and social changes that have significantly exacerbated the tensions between work and family. This failure continues to impose a heavy burden on families, employees, employers and society as a whole. H.R. 925 provides a sensible response to the growing conflict between work and family by establishing a right to unpaid family leave and temporary medical leave for all workers.

THE NEED FOR FAMILY LEAVE

The United States has experienced what can only be characterized as a demographic revolution in the composition of its workforce, with profound consequences for the lives of working men and women and their families. Today, according to the Bureau of Labor Statistics, 96 percent of fathers work and more than 60 percent of mothers also work. Female participation in the labor force has risen from 19 percent in 1900 to more than 52 percent today; 44 percent of the U.S. labor force is now female. Between 1950 and 1980, the labor force participation rate of mothers tripled. The fastest growing segment of this group is comprised of women with children under the age of three. Over 52 percent of all mothers with children under one year of age are now working outside of the home, up from 43 percent just five years ago and 32 percent ten years ago. And over half of all children in two-parent families have both parents in the workforce. The once-typical family where dad worked outside of the home to support mom and two children is found in only 3.7 percent of the nation's families.

Equally dramatic is the unprecedented divorce rate of 50 percent and the increase in out-of-wedlock births, which has left millions of women to struggle as heads of households, supporting themselves and their children in an era of high living costs. Women represent the sole parent in 16 percent of all families. Eighty percent of all divorced mothers and 56 percent of unmarried mothers work outside the home. The majority of these women workers remain in female intensive, relatively low paid jobs and are less likely than men to have adequate job protections and fringe benefits. Each of these phenomena, which affect women of all races, are most pronounced for Black and other minority women. Single women heads of households, who work full-time in the labor force, often cannot keep their families above the poverty line.

Another demographic change relevant to the leave needs of all employees, involves the growing number of elderly in our society. Currently, more than 2.2 million family members provide unpaid help to ailing relatives, the most common caregiver being a child or spouse. About 38 percent of those caring for elderly relatives are children, and 35 percent are spouses. The average age of persons caring for elderly family members is 57 years.

Similirly, the percentage of adults in the care of their working children or parents due to physical and mental disabilities is growing. There is a trend away from institutionalization, which has been shown to be cost ineffective and often detrimental to the health and well-being of persons with mental and physical disabilities. Although independent living situations are often preferable, de-institutionalization can result in increased care responsibilities for family members, many of whom are also, of necessity, wage earners. This trend toward home care is laudable because of the strong benefits it provides to the health and well being of families; however, it can also add to the tension between work demands and family needs. The significance of these demographic changes is apparent. Where men and women alike are wage earners, the crucial unpaid caretaking services traditionally performed by wives—care of young children, ill family members, aging parents—has become increasingly difficult for families to fulfill. Yet these functions—physical caretaking and emotional support, are often performed best by families. Indeed, in many instances, only families can perform them adequately. Society has long depended on the family to meet these needs and being able to provide such care has supported and strengthened families. Depriving families of their ability to meet such needs seriously undermines the stability of families and the well-being of individuals, with both economic and social costs. Yet today, at a magnitude significantly greater than ever before, American business requires the services of women and men alike. Modern families have made painful sacrifices to adapt to the needs of business and to the demands of wage earning. Business must make some modest accommodations to the needs of working families, in order to preserve the most essential of the traditional functions of the family.

The testimony of individual working people before the Committee demonstrated the difficulties faced by today's working families. Over the past three years, the members of the Subcommittees on Labor-Management Relations and Labor Standards have heard testimony from working men and women who have been denied leave to care for newborn, newly adopted or sick children. Ms. Lisa Friedman, a temporary per diem teacher in a large metropolitan public school system for over a year, testified that because she was not yet covered by the city's collective bargaining agreement, she was not protected by any leave policy, paid or unpaid. When Ms. Friedman became pregnant in 1986, she was able to individually arrange a ten week unpaid leave with the school principal where she was assigned, but when she sought to return after her agreed upon leave, the new acting principal refused to reinstate her.

Ms. Lorraine Poole, an employee of a large municipality, testified to her heartbreak when she could not accept a long-awaited adoptive baby that had become available to her. Her employer had told her that she would lose her job if she took time off from work to receive the child and the adoption agency would not place the child unless assured that she would take some time off to be with the child. Ms. Poole was left with no choice but to decline the placement.

Ms. Iris Elliot, described to the Committee the difficulties she faced as a full-time worker with a preschool aged son and a seriously ill infant. Her employer, a national corporation, had no family leave policy. Ms. Elliot was offered a 90 day personal leave, without pay or job protection, but she could not risk losing her position or health benefits as the sole medical insurance carrier for her family. She concluded her testimony by saying "No parent should ever have to be torn between nurturing their seriously ill child and reporting to work like I did."

Another witness, Ms. Tina Hurst, a bottle packer at a large pharmaceutical company, was reprimanded after taking six days off when her son began having epileptic seizures and was notified that she could not be absent again for the next six months. Due to the seriousness of her son's illness, Ms. Hurst requested a temporary unpaid leave to care for her epileptic son. The company had no leave policy, but promised her that if she resigned and returned within a reasonable time she would be rehired. When Ms. Hurst reapplied with the company a month later, she was told the company was not hiring but, to try again in several months. As Ms. Hurst told the Committee:

> I lost my job because I was forced to choose between caring for my son or working to help support my family. * * * I missed only six nights of work in seven months. My child's life was at stake, and my employer gave me an ultimatum over the six nights of absenteeism * * *
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> This is an emotionally stressful period for me and my family. It took some time to find a drug treatment for [my son] that is effective. Losing my job has made this difficult experience even harder. Although my husband's health insurance covers most of the medical bills, we still face considerable hardships. We need my income to support our children and take care of our expenses.
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> Unfortunately, my story is not unique * * * Parents of children with other disabilities have similar problems * * * I have since heard of parents who have left their jobs, had to sell everything they own and had to move from city to city to obtain the best care for their children. Many of these families are forced to consider institutionalization or public assistance because of the lack of support and resources for us.

Men are equally at risk of losing their jobs when they request family leave. Mr. David Wilt of York, Pennsylvania, told the Committee how he lost his job when he needed a few days of leave to take his recently adopted two month old daughter with Downs syndrome to Children's Hospital in Washington, D.C., over a hundred miles away, for major heart bypass surgery. Mr. Wilt, a baker, had arranged with his employer to take three and a half days off, but on his final day he was told if he left he would be fired. Mr. Wilt has been unable to find another job and now stays home and takes care of his two handicapped children while his wife is employed full time.

Stephen F. Webber, a coal miner and member of the executive board of the United Mine Workers of America, after describing his union's efforts to negotiate for family leaves, stated:

> Caring for a seriously ill child presents special problems to working miners. Treatment centers for serious illnesses such as cancer are often located in urban centers, forcing families in rural communities to travel great distances. I think in particular, of one coal miner I know, whose child has cancer, and who must travel nearly 400 miles round trip each month from his rural home to take his child for treatment at a medical center in Morgantown, West Virginia.

His testimony included other compelling examples, including that of a miner whose five year old son became comatose after choking on a piece of food and required twenty-four hour a day care, care that the miner, a single parent and sole wage earner, had to provide or arrange.

Experts who testifed before the Committee in 1985 and 1986 confirmed the importance of family leave. Dr. T. Berry Brazelton, chief of the Child Development Unit at Boston's Children's Hospital and associate professor of pediatrics at Harvard, and Dr. Eleanor S. Szanton, executive director of the National Center for Clinical Infant Programs, provided support for leave to care for infants, explaining, in the words of Dr. Szanton:

> While children require careful nurturing throughout their development, the formation of loving attachments in the earliest months and years of life creates an emotional "root system" for future growth and development. How are these attachments formed? Through the daily feeding, bathing, diapering, comforting and "baby talk" that are all communications of utmost importance in beginning to give the child the sense that life is ordered, expectable and benevolent * * * In short, these factors affect the baby's cognitive, emotional, social and physical development * * * Once parents and babies do establish a solid attachment to each other, the transition to work and child care is likely to be easier for parents and for the child. Parents who have cared for their infant for several months are likely to understand a good deal about their child's unique personality and the kind of caregiver or setting which will be most appropriate. Babies, for their part, who have already begun the process of learning to love and trust their parents are better able to form—and to use—trusting, warm relationships with other adults.

Meryl Frank, director of the Infant Care Leave Project of the Yale Bush Center in Child Development and Social Policy, reported to the Committee on the 1986 conclusions and recommendations of the Project's Advisory Committee on Infant Care Leave. The Advisory Committee echoed the views of Dr. Brazelton and Dr. Szanton, and concluded that the "infant care leave problem in the United States is of a magnitude and urgency to require immediate national action." The Advisory Committee, whose members include academics and professionals in child development, health and business, recommended a 6 month minimum leave, with partial income replacement for the first 3 months and benefit continuation and job protection for the entire leave period.

The Committee was also provided the recommendations of the Economic Policy Council of the United Nations Association of the United States of America (EPC). During 1984, the EPC, which is comprised of corporate executives, union presidents and academics, studied the economic and demographic trends transforming the family and labor force and issued a report in December of 1985 of its findings, entitled "Work and Family in the United States: A Policy Initiative." The EPC recommended a 6–8 week job protected maternity leave, with partial income replacement; a 6 month unpaid, but job protected, parental leave; job protected disability leave for all workers; the provision of temporary disability insurance to all workers; and the establishment of a national commission on contemporary work and family patterns.

THE EXTENT OF EXISTING FAMILY LEAVE POLICIES

Many of the various aspects of family leaves, particularly with regard to pregnancy and parenting, have been extensively studied. However, currently, there is still no comprehensive study of the range of family leaves provided by American businesses. Many employers provide "personal leave" which is often available for family crises such as the serious illness or death of a child or parent. Such leave is almost universally unpaid and highly discretionary. Employees sometimes are able to take their vacation leaves (a benefit that is usually paid) at times of such crises. Only a small percentage of employers have policies providing a leave specifically for purposes of caring for ill family members.

There has been considerable study of those aspects of family and medical leave relating to pregnancy, maternity and less frequently, paternity. Such leave has been the subject of litigation since the early 1960's, based upon Constitutional claims and Title VII of the Civil Rights Act of 1964, as women workers sought equal treatment in the work place. The amendment of Title VII in 1978, by the Pregnancy Discrimination Act (PDA), has especially had a significant impact on the perception of women as wage earners and on the availability and nature of both parental and medical leave. Under the PDA, an employer is prohibited from discriminating on the basis of pregnancy, childbirth and related medical conditions. The PDA further provides that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work." (42 U.S.C. sec. 2000e-k.)

This language requires that employers adhere to two basic principles. First, they must permit physically fit pregnant employees to continue to work just as any other physically fit employee would be permitted to work (traditionally, women were terminated or placed on mandatory unpaid leave early in pregnancy). Second, when they become physically unable to work because of a complication of pregnancy or due to childbirth and the recovery period following childbirth, they are entitled to any sick leave, disability, health insurance or other benefit extended to other employees who, because of a physical condition, are unable to work.

The result has been that employers, to comply with the law, permit pregnant women to work unless or until they are unable to work and then provide whatever compensation or leaves they provide to other employees temporarily unable to work for medical reasons. As a practical matter, this means that many pregnant employees work until they give birth and then are on medical leave (paid if the employer compensates other disabled workers of if there is a state Temporary Disability Insurance program) for the physical recovery period following childbirth (typically 6-8 weeks). Some employers provide an additional unpaid leave period following disability to allow a parent to stay home with a new baby. This additional "parental leave", if given, must, under Title VII, be available to parents of either sex. (Equal Employment Opportunity Commission (EEOC) Compliance Manual section 626.6; see also, *Ackerman* v. *Board of Education of the City of New York,* 387 F. Supp. 76 (7th Dist. N.Y. 1974).)

In response to litigation and the influence of the PDA, thousands of companies have reevaluated their personnel policies and implemented policies responsive to the needs of their changed workforces. In addition, four of the five states which provide temporary wage replacement under a state Temporary Disability Insurance program (California, New Jersey, New York and Rhode Island) extended their coverage to pregnancy and childbirth related work disabilities. (The fifth state, Hawaii, included such coverage from the inception of its state disability insurance program in 1969). These longstanding state programs have proven to be both successful and cost-effective wage replacement systems for workers who are unable to perform their jobs due to non-work related illnesses, injuries or other medical reasons.

The employers who do provide these crucial leaves recognize the significant benefits that flow to employers from doing so. As Ms. Jeanne F. Kardos, director of employee benefits at Southern New England Telephone, explained in her testimony in support of this bill:

> There are several factors which caused us to develop our benefit philosophy with regard to maternity and parental care. Along with many leading companies in the country, we recognize that women with children are in the work force to stay. Whether they are single parents or not, they have special needs involving pregnancy and child-rearing. We've also responded to a heretofore ignored group—fathers who want to be involved with full-time child-rearing at some point after birth or adoption. The special needs of these parents and more than that, the benefits which accrue to them and their children from this early participation in child-rearing, cannot be ignored any more than the wisely accepted need for medical or pension benefits.
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> In addition, one of the most important concerns we share with our employees is an interest in their careers. It is clear that forcing them to choose between their children and their jobs, or to compromise on either, produces at least one loser—maybe two. Adequate disability and parental leave can solve these problems. The employee returns to the company when he or she is prepared to do so, and the company retains an important asset.
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> Lastly, we want our benefit plans to be recognized as progressive and competitive. We know that it will help in attracting talented individuals and if they are happy with their benefits, they'll want to stay with us.

More large companies, like Southern New England Telephone and US West, recognize that the company benefits when workers' are protected by adequate leave policies. Mr. James H. Stever, vice president for human affairs at US West, an international company with three large regional telephone subsidiaries and over 70,000 employees, testified before the Committee. He stated that US West recognizes the role that each employee plays in contributing to the company's success and has developed six different types of leaves to meet the needs of its employees.

While much concern has been expressed as to the ability of smaller businesses to provide unpaid leaves, several small business owners have testified before the Committee that the benefits to even a small business outweigh whatever inconvenience or cost may be incurred. Ms. Gene Boyer, the owner of a small retail furniture store for over 30 years and the Small Business Administration's 1985 Women's Business Advocate of the year, expressed her support of the bill from the perspective of a small business owner:

> The fact is we could less afford to lose these employees than to provide them with maternity or [medical] leaves. The cost of training and orienting new employees is by far the greatest cost that the small business owner bears. The cost of keeping a loyal employee happy, healthy and able to preserve the family's sense of well-being pales by comparison.

The National Association of Women Business Owners (NAWBO), which represents 3,000 women businesses owners across the country, in recognition of their unique role in representing the interests of women who are also business owners, has given considerable thought to a minimum standard for the provision of family and medical leave. Ms. Mary Del Brady, the president of NAWBO, testified that "* * * every parent should be able to take time off work to have or adopt children or to care for seriously sick children without the fear of losing his or her job * * *", and felt that government requirements in this area could even include small businesses if limited to basic benefits, such as a six week unpaid leave, with which all busiensses would be able to comply.

Several recent studies on current parental leave policies were described at the Committee hearings. All of the studies on employer-provided family leaves have shown that while many employers permit parental leaves, a substantial percentage of employers of all sizes have yet to adopt such policies. The most recent study was conducted by the National Council of Jewish Women Center for the Child in 1987. The survey was conducted in 100 communities across the country and included responses from over 2,000 employers of all sizes. The NCJW study separated the experiences of employers with fewer than 20 employees and those with 20 or more employees. The study found that 72 percent of women at firms of 20 or more and 51 percent of women at firms with under 20 employees receive a minimum of 8 weeks of job protected medical leave for pregnancy. Almost 40 percent of all of the surveyed employers also provide an additional period of family leave to women. Although the differences in the provision of medical leave for pregnancy were significant for smaller and larger employers, there was little difference in the provision of family leave between varying sizes of employers.

These studies supplement the findings of two earlier surveys which focused on the policies of medium and large sized firms. Catalyst, a national non-profit research organization, conducted a survey of the policies of Fortune 1500 companies and issued its "Report on a National Study of Parental Leaves" in 1986. The Catalyst survey, because it focused only on the country's largest companies, overstates the protections offered to new parents by employers generally. Catalyst reported that 95 percent of the survey's respondents offered short-term disability or medical leave during a worker's (including a pregnant worker's) period of inability to perform his or her job; almost all with full or partial pay. Of this 95 percent, 90.2 percent continued all benefits during disability leave. Moreover, 51.8 percent of the responding companies offered some unpaid leave to women for parenting (as distinct from the disability leave) and guaranteed their right to return; 40 percent to the same job, nearly 50 percent to a comparable job. One third of these employers offered four to six months leave and 7.2 percent offered over six months of family leave. Despite the apparent conflict with Title VII of the Civil Rights Act, only 37 percent of these companies extended parental leave rights to fathers and often on a different (and less extended) basis than to mothers. Additionally, only 27.5 percent of the respondents offered benefits to workers who adopt children.

The Catalyst survey found that approximately 75 percent of the companies granting both kinds of leaves rerouted the work of employees on leave and a large percentage of the companies hired temporaries to supplement their rerouting strategy or to fully take over the absent employee's work. Significantly, 86.4 percent of the respondents stated that setting up a leave period and arranging to continue benefits was relatively easy. As part of its report to corporations, Catalyst recommended that companies provide disability leave, with full or partial pay, and unpaid parental leave for up to three months, with reinstatement to the same or comparable position after any leave.

A survey of 1,000 small and medium sized firms, conducted in 1981 by Sheila Kamerman and Alfred Kahn of the Columbia University School of Social Work, provides an important companion to the Catalyst Study. According to Kamerman and Kahn, less than 40 percent of all working women received paid disability leave for the six to eight week recovery period after childbirth. This figure, which is far lower than the Fortune 1500 figures reported by Catalyst, probably reflects the fact that small and medium size employers are less likely to provide disability benefits to any worker. (These findings may also reflect the earlier survey date of the Columbia Study, which was undertaken much closer in time to the April 1979 effective date of the PDA than was the Catalyst survey; smaller employers may not yet have adjusted their policies at the time of the first survey.) Eighty-eight percent of the companies provided "maternity" leave, but only 72 percent formally guaranteed the same or comparable job and retention of seniority.

Each of these studies, taken together, indicate that while many employers are successfully providing family and medical leaves to their employees, a significant percentage of employers have failed to provide such leaves. Employees of large companies are more likely to be provided with paid disability leave following childbirth, than are employees of small and medium sized firms. The small and medium size firms respond to new parent employees by providing unpaid "maternity leaves", a full third of which extend only for the period of the mother's physical inability to work. It is likely that many of those firms providing leave for that period of time also grant unpaid leave to other disabled employees and thus provide the same benefit for both pregnancy and non-pregnancy related disability. A significant percentage of both Fortune 1500 companies and the small and medium companies studied by Kamerman and Kahn treat fathers seeking parental leave less favorably than mothers, in violation of Title VII. These studies, more fundamentally, indicate the wide variation among employers, large and small, in the provision of parental, as distinguished from disability, leaves, and the inadequacy of many leave policies.

THE NEED FOR TEMPORARY MEDICAL LEAVE

The need for a temporary medical leave policy arose long before the fundamental changes in the workforce previously discussed. Workers and their families have always suffered inordinately when fired for medical reasons. However, the changed demographics have dramatically added to the harm caused by the lack of such a policy. The once traditional family which depended on the salary of a sole wage earner was and is severely affected by the loss of the ill worker's job. But while this family has traditionally had a second parent available to help meet such emergencies, today a new class of workers exists without such backup support: single heads of household, who are predominantly women workers in low-paid jobs. For these women and their children, the loss of the woman's job when she is sick can have devastrating consequences.

A poignant example of the harm inflicted when a seriously ill person is fired was recounted at the Committee hearings by Ms. Frances Wright. Despite 10 years of exemplary service as a retail manager of a clothing store in Virginia, she was fired after developing cancer of the colon. She initially needed three months off for surgical procedures. Later, although she made every effort to accommodate the employer's needs by scheduling chemotherapy treatments on weekends (keeping work loss to one day), and although she had been absent from work in her ten years with the company only two other times (for a total of three weeks), she was fired. The company did agree to pay her disability benefits and told her to file for Social Security disability benefits, despite the fact that her doctor believed she was able to work (an assessment with which the Social Security Administation agreed). The insurance company told her she could not work or she would lose her disability benefits. The two year interval before she was finally able to find new work was extremely difficult for her. As she said,

> Because of my illness, I lost my job, my self-esteem, my job satisfaction, as well as the continuity of a salary and benefits as a result of my job performance and seniority. I was angry and frustrated. I had to fight against becoming bitter. I had to fight to keep my enthusiasm, vitality and desire to lead a productive and meaningful life based on my own self-motivation and productivity.

Subsequent events in the account of Ms. Wright reveal that companies that have fired workers with serious health conditions are perfectly able to take a more generous approach. When Ms. Wright's company was taken over by a new owner, she was hired back; and this time, when she had a recurrence of the cancer, she received five weeks of paid leave, and took her leave with the emotional and financial security of knowing her job was not at risk. In short, companies can comply with this legislation with no significant costs. Indeed, the Committee views this legislation as ultimately reducing the individual, family, employer, and societal costs of serious health conditions.

There are many similar stories of pregnant workers who have been fired when their employers refused to provide an adequate leave of absence. Just when a mother faces increased medical and family expenses from the arrival of a new baby, she is forced out of the labor market.

These accounts illustrate the human and economic costs to the individual, the family, the empoyer and society when workers with serious health conditions are fired. The individual already beset with difficult medical problems must simultaneously face the loss of a job, salary, and benefits. Families are especially hard-hit as they struggle to meet increased expenses with decreased or no income, single parent families having the greatest difficulty.

The evidence indicates that only a minority of firms actually take the harsh termination approach to such workers—further undermining the claim that this bill imposes unsupportable costs on employers. Rather, most employers can and do see that it is in their own economic interest to retain employees. A 1983 Bureau of National Affairs (BNA) report on personnel policies was particularly instructive. More than 90 percent of the firms surveyed in the report had specific provisions for unpaid medical leaves of absence. The bureau of National Affairs, Inc., Personnel Policies Forum, "Policies on Leave From Work" (June 1983). Further, among employer's with provisions permitting unpaid personnel leaves of absence, the employee's extended physical health problems were cited as the most common reason for granting such a leave. This is the very circumstance contemplated by the temporary medical leave provisions in the bill. Close to 80 percent of the firms allowed unpaid personal leaves for medical reasons, with nearly as high a proportion permitting unpaid leaves for alcohol or drug abuse rehabilitation, or mental health problems. Moreover, the vast majority of firms permitted unpaid leave in excess of five months.

Data supportive of the BNA results come from the 1986 report by Catalyst, "Report on a National Study of Parental Leaves." The Catalyst survey revealed that many employers go beyond the requirements of this legislation by providing paid medical leave. Ninety-five percent of the companies surveyed by Catalyst grant short-term disability leave (38.9 percent fully paid, 57.3 percent partially paid, and 3.8 percent unpaid); 90.2 percent of them continue full benefits during the period; 80.6 percent of them guarantee the same or a comparable job. For these companies, leave length appears to be tied to the employee's medical condition.

Another significant benefit of the temporary medical leave provided by this legislation is the form of protection it offers women workers who bear children. Since all employees who are temporarily unable to work due to serious health conditions are treated the same under the bill, it does not create the risk of discrimination against pregnant women which is posed by legislation which provides job protection only for pregnant women. Legislation for pregnant women only gives employers an economic incentive to discriminate against women in hiring policies; legislation helping all workers equally does not have this effect. Thus, the Committee invokes not only Congress' power to regulate commerce under the Commerce Clause, but also its power to enforce the guarantees to equal protection and due process of the laws embodied in the Fourteenth Amendment.

INTERNATIONAL AND STATE INITIATIVES ON FAMILY AND MEDICAL LEAVE

The inadequacy of existing leave policies is perhaps most clearly seen when the family and related medical leave policies of the United States are compared to those of the rest of the world. With the exception of the United States, virtually every industrialized country, as well as many Third World countries, have national policies which require employers to provide some form of maternity or parental leave. The United States' major competitors already provide some form of paid leave. Japan provides 12 weeks of partially paid maternity leave. In Canada, women can take maternity leave for up to 41 weeks and receive 60 percent of salary for the first 15 weeks. All together, one hundred and thirty five countries provide at a minimum maternity benefits, 127 with some wage replacement. These policies are well established, with France, Great Britain and Italy having had laws requiring maternity benefits prior to World War I, which are now part of more general paid sick leave laws providing benefits for all workers unable to work for medical reasons. Among the more industrialized countries, the average minimum paid leave is twelve to fourteen weeks with many also providing the right to unpaid, job-protected leaves for at least one year. Leave is provided either through a national paid sick leave system or as part of a national family policy designed to enhance and support families. These countries are moving rapidly to expand their policies to fathers, as highlighted by the nine European Economic Community countries which now provide parental leaves. The long-established practices of these countries stand in marked contrast to the complete lack in this country of a standard minimum policy for family leave.

Since the introduction of federal family and medical leave legislation, numerous states have begun to consider similar parental leave initiatives. These state initiatives have been recently bolstered by the Supreme Court decision in *California Federal Savings and Loan Association* v. *Guerra,* 479 U.S.—,107 S. Ct. 683 (1987), which upheld the right of states to enact maternity leave laws. During 1987, 33 states, including the District of Columbia, considered family leave legislation, four states passed parental leave laws and three passed maternity leave laws. Connecticut passed a 24 week family and medical leave law for all state employees. Oregon passed a law providing 12 weeks of unpaid parental leave for birth or adoption of a child for all workers employed by companies with 25 or more employees. Minnesota passed a six week parental leave law for birth or adoption covering workers at firms with 21 or more employees. Rhode Island's law provides 13 weeks of unpaid parental leave for birth, adoption or the serious illness of a child for all workers employed by firms of 50 or more. Iowa, Louisiana and Tennessee passed maternity leave laws. These states join or supplement the 11 states that had previously enacted laws or regulations protecting the right to maternity leave (Colorado, Hawaii, Montana, Oregon, Connecticut, Kansas, New Hampshire, Massachusetts, Washington, California and Iowa). It is expected that many more states will be considering family leave legislation during 1988. It also highlights the need for a federal minimum standard on family and medical leave to provide uniform and consistent coverage.

THE FAMILY AND MEDICAL LEAVE ACT SETS A MINIMUM LABOR STANDARD

The Family and Medical Leave Act addresses the new predicament facing families by turning to traditional labor law. It establishes a minimum labor standard for leave to accommodate an overriding societal interest in assisting families. It is based on the same principle as the child labor laws, the minimum wage, Social Security, the safety and health laws, the pension and welfare benefit laws, as well as other labor laws which establish minimum standards for employment. Each of these standards arose in response to specific problems with broad implications. The minimum wage was enacted because of the societal interest in preventing the payment of exploitative wages. Employers were working children for long hours, under unsafe conditions, when the child labor laws were enacted. The Social Security Act was based on the belief that workers should be assured of minimal pension benefits at retirement. The Occupational Safety and Health Act was intended to assure that workers would not be subject to unsafe or unhealthy conditions at work.

There is a common set of principles underlying each of these labor standards. In each instance, a federal labor standard directly addressed a serious societal problem, such as the exploitation of child labor, or the exposure of workers to toxic substances. Voluntary corrective actions on the part of employers were inadequate, with experience failing to substantiate the claim that, left alone, all employers would act responsiblity. Finally, each law was enacted with the needs of employers in mind. Care was taken to establish a standard that employers could meet.

It is always a minority of employers who act irresponsibly. Most employers pay a living wage, take steps to protect the health and safety of their work force, and offer their employees decent benefits. A central reason that labor standards are necessary is to relieve the competitive pressure placed on responsible employers by employers who act irresponsibly. Federal labor standards take broad societal concerns out of the competitive process so that conscientious employers are not forced to compete with unscrupulous employers.

The Family and Medical Leave Act was drafted with each of these principles in mind and fits squarely within the tradition of the labor standards laws which have preceded it. Rather than being a new and untested "mandated benefit" as some critics have claimed, the bill draws on well established principles of law law. In the past, Congress has responded to changing economic realities by enacting labor standards that are now widely accepted without question. In drawing on this tradition, the FMLA proposes a labor standard to address a significant new reality in today's workplace.

Explanation of the Compromise Bill

INTRODUCTION

During subcommittee consideration of H.R. 925, Chairman Clay and ranking minority member Roukema stated their intention to work together with the Subcommittee members and others in an effort to reach a bipartisan compromise that would be brought before the full Committee. After extensive discussions which included several members of Congress, a compromise on the bill was reached between Representatives Clay, Roukema and ranking Committee member James Jeffords (R-Vermont) that was ultimately incorporated in the bill approved by the Committee.

In approving the compromise, the Committee sought to achieve the three purposes set forth in section 2(b): (1) to balance the demands of the work place with the needs of the family and in so doing, promote the stability and economic security of the family; (2) to entitle employees to take reasonable family or medical leave for certain critical periods in the life of a family, and (3) to accommodate the legitimate interests of employers.

The Committee has listened to the testimony of many hard-working and dedicated employees who spoke of great economic and personal hardship resulting from inadequate leave provisions. Their testimony poignantly demonstrated the need for legislation to guarantee reasonable job protected leave for serious health conditions, early child-rearing, and care-taking for family members in serious need. A broad coalition of women's, labor, disability, civil rights, religious and other civic groups have endorsed both the original legislation and the compromise.

The Committee has also listened to the testimony, both for and against the legislation, from employer associations as well as individual employers. Several employers testified in favor of the legislation, explaining how leave policies comparable to those in the bill have benefited their companies. Other employers expressed concern about the ability of small employers to accommodate a leave standard and the cost of providing such leave. Most of the changes made in the compromise bill address the problems that were raised by employers.

FAMILY LEAVE

The compromise bill makes available to employees up to 10 weeks of unpaid "family leave" over a two year period upon the occurrence of certain events critical to the life of a family. An employee may take family leave upon the birth of their child or upon the placement for adoption or foster care of a child with the employee. Family leave is also available when an employee needs to care for their child or parent who has a "serious health condition". These provisions allow employees to take time off from work to care for their children or parents during times of acute family need, secure in the knowledge that they can return to their jobs when the leave period is over. Family leave is available to employees of either sex, preserving the Committee's commitment to sex equality as well as statutory and Constitutional requirements.

The amount of time allowed for family leave in the original bill, eighteen weeks, was based on the period that child development experts suggested was the minimum time needed for newborns and parents to adjust to one another. Dr. T. Berry Brazelton, chief of the Child Development Unit at Boston's Children's Hospital, recommended a minimum of four and one half months, explaining that these early months involve crucial stages of development that are "predictable and are necessary for both the baby and for the parent before [there is] a secure attachment." This early period of adjustment provides a crucial opportunity for cementing a family. Such recommendations apply equally to adoption and foster care placements, where attachment, particularly if the child has been shifted among previous caretakers, is more difficult to achieve. In addition, parents require a sufficient period of time to make safe and adequate day care arrangements for their new child, often a challenging task given the opportunity of existing day care options.

In the compromise bill, the family leave period has been reduced to 10 weeks in response to concerns raised by employers about accommodating the eighteen week minimum of the original bill. Employers maintained that it was significantly easier to adjust work schedules or find temporary replacements over the shorter time period. While not ideal from the employees' perspective, a ten week minimum represents a middle ground between the family needs of workers and an employer's business needs. Of course, employers are free to, and are encouraged to, provide longer leaves.

The availability of 10 weeks to care for a son, daughter or parent with a serious health condition is also essential to the health of families. For example, a child or parent incapable of self-care who must undergo major surgery may require care while preparing for, undergoing or recovering from the surgery. A family member with a terminal illness desperately needs not only the physical care but also the emotional support that only loved ones can provide. Moreover, employees caring for the terminally ill child or parent have their own compelling emotional need to provide care, comfort and support in this most trying of circumstances.

TEMPORARY MEDICAL LEAVE

The comprise bill provides for up to 15 weeks over a 12 month period of unpaid leave for workers temporarily unable to perform the functions of their positions due to serious health conditions. Leave would be available for the period of time an employee is "unable to perform the functions" of his or her position because of either the underlying health condition or the need to secure medical treatment or supervision for that condition.

The minimum length of medical leave, which was twenty-six weeks in the original bill, was shortened to fifteen weeks in the compromise bill approved by the Committee. Again the length of leave was shortened to accommodate concerns raised by employers that the longer period of leave was too burdensome. The original sponsors felt the longer period was justified because of the effect a prolonged serious illness combined with job loss can have on a family. Responding to concerns raised by employers about the length of leave, the Committee adopted fifteen weeks as a reasonable ground.

The purpose of this provision is to help provide reasonable job security to workers faced with serious health problems, including pregnancy and childbirth. The loss of a job at the onset of a serious health condition substantially increases the physical, emotional and financial strains on the worker and the family which is economically dependent upon the worker's income. Moreover, a worker who has lost a job due to a serious health condition often faces future discrimination in finding a job which has even more devastating consequences for the worker and his or her family.

Those families most severely affected by the lack of a temporary medical leave are single-earner families with dependent children, whether a family with one wage earner and one homemaker, or a single-parent family. In such families, the loss of the wage earner's job at a time of high medical bills and emotional trauma can push the family into bankruptcy, homelessness, or the welfare, unemployment or social security income systems. The single-parent family whose sole wage earner loss his or her job faces truly dire circumstances due to the lack of a second potential income to fall back on. The medical problems, loss of job and wages, and the care of dependent children must be faced alone. Dual-earners families are also frequently dependent on both incomes, and the loss of one earner's job due to a serious health condition can have consequences as disastrous as those affecting the single-earner family.

The temporary medical leave requirement is intended to provide basic, humane protection to the family unit when it is most in need of help. It will also help reduce the societal cost born by government and private charity. Individuals or families with a member who is jobless because of a serious health condition are likely candidates for public assistance or private charitable relief. Holding a job open for a reasonable period of time significantly improves the chances of recovery for an individual or family. Not only does such a recovery restore the family, but it also results in significant cost savings in social services.

EXEMPTION OF SMALL BUSINESS UNDER THE COMPROMISE

A major change in the compromise bill was to significantly expand the small employer exemption. Under the compromise, the bill will inititally cover only those employers with a total of fifty or more employees. The compromise requires that a Commission be established which must report to Congress within two years about the effect of family and medical leave on small emloyers. After three years, the bill would cover employers with thirty five or more employees. Thus, Congress would have time to act on the report if appropriate prior to the lowering to the exemption. The use of a phase-in period has been applied in similar legislation, including

Title VII of the Civil Rights Act of 1964 and the Age Discrimination Act of 1967.

The exemption of employer with less than fifty employees means that 95 percent of all employers are excluded form the coverage of the bill and 44 percent of all employees are exempted. An exemption of employers with less than thirty five employees excludes 92 percent of all employers. (The GAO estimates that given the other coverage qualifications in the compromise, such as the one year of service requirement and the key employee exemption, with the fifty employee exemption, the bill would cover approximately 40 percent of the workforce. See below.) Whole concerned about the low coverage figures, the Committee, in recognition of the particiar problems faced by small employers, approved a compromise which exempts the small employer while providing coverage for workers employed my medium and large sized companies.

The Commttee is confident that the bill would establish a norm which most uncovered employers would try to match in order to attract and retain good employees.

OTHER CHANGES MADE IN THE COMPROMISE

Several other significant concessions to concerns raised by the business community were included in the compromise approved by the Committee. Under the new provisions, an employee is eligible for leave only after having worked for at least 1,000 hours and having been on the job for twelve months. Thus, the bill does not cover part time or seasonal employees working less than 1,000 hours a year. This is the same part time employee exclusion contained in the Employee Retirement Income Security Act of 1974 (ERISA) which regulates the coverage and paticipation of workers in employer sponsored pension plans.

The compromise also enables employers to exempt key employees from coverage of the bill if the employer can demonstrate a business necessity to do so. A key employee is an employee who receives a salary in the top 10 percent of the employer's workforce or is one of the five highest paid employees. The test for business necessity is whether granting a key employee leave would cause grievous economic harm. The provision was added in response to the concern that sometimes a particular employee is of such vital importance that his or her absense would have a demonstrable and serious adverse economic impact on a business.

Other provisions in the compromise clarified the original bill. Reduced leave, which occurs when an employee stays on the job but works reduced hours, has to be mutually agreed upon between the employer and employee. For purposes of determining the size of an employer, there is a geographic limitation of a 75 mile radius that applies to the aggregation of employees at different facilities. This provision recognizes the difficulties that an employer might have in reassigning workers to geographically separate facilities. In addition, if two spouses work for the same employer they must share the family leave of one employee except when the leave is to care for a seriously ill child. In the case of leave for a serious medical condition, an employer may require re-certification of the illness. The damages an employer faces when there has been a violation of the act may be reduced if the employer acted in good faith. Finally, the mandate of the commission established by the bill is modified so that its purposes include a specific study of the effects of the Act on small businesses as well as the effect of family and medical leave policies in general.

Prior to the compromise, provisions had been added to the bill in response to problems pointed out by the business community. Several of these provisions had been added during Committee mark-up in the 99th Congress and remain in the compromise bill. The bill continues to require that an employee notify an employer of his or her intent to take a leave when the necessity for either family or medical leave is foreseeable. In addition, when the necessity for leave is foreseeable, based on planned medical treatment or supervision, the employee is required to make a reasonable effort to schedule the treatment or supervision so as not to unduly disrupt the operations of the employer.

The bill includes extensive medical certification provisions. In addition to the requirement that an employee provided certification of a serious health condition, the bill also entitles an employer, at its own expense, to require that an employee obtain the opinion of a second health care provider regarding the serious health condition.

It is the Committee's belief that the compromise bill properly accommodates the legitimate concerns of the business community while providing America's employees basic leave and job security rights when facing a period of great concern to their family. The compromise bill sets a uniform minimum standard for family and medical leave that is a carefully balanced and crucial accommodation of work and family. The Committee believes that such a standard is in the interest of employees, employers and families.

THE COMPROMISE BILL IS COST EFFECTIVE

The Committee believes that with the employer safeguards now included in the compromise bill, possible short term costs to an employer in accommodating the leave requirements will be more than offset in long term savings. Expressions of concern about the costs imposed by the bill have often overlooked the expense of firing workers and hiring replacements. Placing an employee on unpaid leave and hiring a temporary replacement or redistributing the work within the firm is oftens less expensive than firing the current employee and hiring a permanent replacement. The bill will increase the likelihood that employees will remain with an employer and the retention of a loyal workforce has been shown to result in productivity gains as well as savings on costs for recruiting, hiring, and training replacement workers.

In addition to these direct employer savings, a minimum leave policy results in cost savings to families and society as well. In its 1987 study "Costs to Women and their Families of Childbirth and Lack of Parental Leave", the Institute for Women's Policy Research found that the cost to women without leave, in lost wages and longer unemployment, averages $457 per individual over the two years after the birth of a child and a total cost of $225 million for all women. The cost to society in transfer payments to women who had or adopted children was estimated at almost $108 million a year.

The General Accounting Office (GAO) has also substantiated the cost effectiveness of the bill. In response to a request from subcommittee Chairman Clay and ranking minority member Roukema, the GAO conducted a cost estimate of H.R. 925, as modified by the compromise. Using 1987 census data to determine the number of workers potentially protected by the bill, the GAO conducted a survey of 80 firms in two metropolitan labor markets—Detroit, Michigan and Charleston, South Carolina—to obtain data on the practices and experiences of actual employers.

The GAO determined that the bill's aggregate costs to all employers with a workforce of more than fifty would be at most $188 million annually. When the bill covers employers of 35 or more the annual cost only increases to $212 million. The GAO found that most of this cost derives from the continuation of health benefits provided for under the bill. Based on existing data and the experience of the surveyed employers, the GAO found that little or no cost will arise from replacing workers on leave nor from losses in productivity. Their survey found that less than one-third of all workers to take leave are replaced and when they are replaced, the costs were either similar to or less than the wages of the workers on leave.

While the costs of providing unpaid leave are low, the GAO found that the number of workers protected by such leaves are substantial. The GAO calculated that approximately 1,675,000 workers are likely to be eligible to benefit from unpaid leave under the compromise (840,000 workers are likely to benefit from leave for birth or adoption, 225,000 workers from leave to care for a seriously ill child or parent, and 610,000 workers from temporary medical leave).

Finally, the GAO estimate likely overstates the costs of the bill. The GAO assumed that all workers who are eligible to take leave will take the full 10 weeks of family leave permitted. The GAO's own survey found that 84 percent of the women who took family and medical leave incident to childbirth or adoption returned within 10 weeks. The GAO also did not take into consideration the key employee exemption for the top 10 percent of salaried employees. Nor did the GAO reduce its cost estimate for existing employer family and medical leave policies or state mandates. The GAO cost estimate confirmed that this legislation benefits a significant number of workers with little cost to most employers.

Committee Views

FAMILY LEAVE

The bill provides for up to ten weeks of family leave over a two year period incident to the birth or placement for adoption or foster care of a child. Family leave may also be taken in order to care for a child, a dependent son or daughter over the age of eighteen or a parent who has a serious health condition.

The phrase "in order to care for", in section 103(a)(1)(C), is intended to be read broadly to include both physical and psychological care. Parents provide far greater psychological comfort and reassurance to a seriously ill child than others not so closely tied to the child. In some cases there is no one else other than the child's parents who could care for him or her. The same is often true for adult children caring for a seriously ill parent. Employees are thus assured the right to a period of leave to attend to their child's or parent's basic needs, both during periods of inpatient care and during periods of home care, when such child or parent has a serious health condition.

A father, as well as a mother, can take family leave because of the birth or serious health condition of his child; a son as well as a daughter is eligible for leave to care for a parent. Such leave can generally be taken at the same time, on an overlapping basis, or sequentially, as long as it is taken "because of" one of the circumstances specified in section 103(a). Section 103 make it possible, among other things, for a father to take a family leave during his wife's childbrith and recovery, an especially crucial time, whether the wife is a homemaker or an employee on temporary medical leave. More generally, it permits families to choose which parent will attend to extraordinary family responsibilities in light of the family's preferences, needs, career concerns, and economic considerations.

In the case of a placement for adoption or foster care, under section 103(a)(1)(B), leave may be taken upon the actual arrival of a child or may begin prior to arrival if an absence from work is required for such a placement to proceed.

The terms "son or daughter" and "parent" in section 103 must be read in light of the definitions of those terms in sections 101(11) and 101(12) of the bill. Many children in the United States today do not live in traditional "nuclear" families with their biological father and mother. Increasingly, the people who care for children and who therefore find themselves in need of workplace accommodation for their child-care responsibilities are the child's adoptive, step, or foster parents, or their guardians, or sometimes simply their grandparent or other relative or adult. This legislation deals with such families by tying the availability of "parental" leave to the birth, adoption, or serious health condition of a "son or daughter," and then defining the term "son or daughter" to mean "a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis * * * (Sec. 101(11).) In choosing this definitional language, the Committee intends that the terms "son or daughter" and "parent" be broadly construed to ensure that the employees who actually have the day-to-day responsibility for caring for a "son or daughter" or who have a biological or legal relationship to that "son or daughter" are entitled to leave.

An employee is also eligible for family leave to care for a son or daughter over 18 years of age if he or she has a serious health condition and is "incapable of self-care because of a mental or physical disability." (Sec. 101(11)(B).) The bill recognizes that in special circumstances, where a child has a mental or physical disability, a child's need for parental care does not end when he or she reaches 18 years of age. In such circumstances, parents continue to have an active role in caring for their sons or daughters over eighteen years of age. A dependent adult son or daughter who has a serious health condition and who is incapable of self-care because of a mental or physical disability presents the same compelling need for parental care as the child under 18 years of age with a serious health condition. The nature of the son or daughter's serious health condition wich would warrant leave under this provision would be similar to those warranting leave to care for sons and daughters under 18 years of age and parents.

Section 103(a)(1)(C) also provides for a leave to care for an employee's parent who has a serious health condition. Under this provision, an employee could take leave to care for a parent of any age who, because of a serious mental or physical condition, is unable to care for his or her own basic hygienic or nutritional needs or safety. Examples include a parent whose daily living activities are impaired by such conditions as advanced Alzheimer's disease, stroke, severe clinical depression or who is recovering from major surgery or in the final stages of a terminal illness.

Family leave may be taken on a reduced leave basis if agreed to by the employee and employer as set forth in section 103(b). Any reduced leave schedule agreed to shall not result in a reduction in the total amount of leave to which an employee is entitled. A "reduced leave schedule" is defined as "leave scheduled for fewer than an employee's usual number of hours per workweek or hours per workday." (Sec. 101(8).)

The availability of reduced leave is crucial if the purposes of family leave are to be carried out in some instances. the leave provided by this bill is unpaid. It is thus, as a practical matter, unavailable to those families who simply cannot afford such a leave. If the choice is between full-time leave and no leave at all, these families, whose number is likely to be substantial, will be denied the important benefits of the leave. Reduced leave permits these families to experience some of the benefits of the bill while maintaining economic self-sufficiency. We anticipate that reduced leave will often be perceived as desirable by employers who would often prefer to retain a trained and experienced employee part-time for the weeks that the employee is on leave rather than hire a full-time temporary replacement.

Family leave under section 103 shares a number of statutory terms, definitions and ancillary provisions with temporary medical leave under section 104. Most centrally, section 103 grants family leave to an employee for the care of a child or parent who has a "serious health condition," a term defined for purposes of both section 103 and 104 in section 101(10). Moreover, both sections 103 and 104 provide that leave taken in connection with a serious health condition may be taken "intermittently when medically necessary." (Sections 103(a)(3); 104(a)(2).) Both provisions require, where the need for leave is foreseeable, that the employee provide the employer with prior notice "in a manner which is reasonable and practicable," 103(e)(1), (2)(B), 104(d)(2); and that health treatment and supervision be scheduled so as not to disrupt unduly the operations of the employer. (Sections 103(e)(2)(A), 104(d)(1).)

Finally, the certification requirement of section 105 applies not only to temporary medical leave under section 104, but also to family leave for serious health conditions under section 103(a)(1)(C). In each of these instances of common language or common provisions, the policies, concerns and interpretations discussed in connection with the temporary medical leave requirement apply to family leave as well.

Section 103(d) (1) and (2), governing situations where an employer has a policy of paid family leave and providing for the substitution of paid leaves of various kinds for the unpaid leave mandated by this legislation, also has its parallel in section 104(c). Both provisions clarify that where an employer has a paid family or temporary medical leave policy, the remainder of the statutory period (up to 10 workweeks for family leave, up to 15 workweeks for medical leave) may be unpaid. The provisions on substitution of other types of paid leave diverge with respect to the type of paid leave that may be substituted. While both permit the substitution of paid vacation leave, the family leave provision also allows substitution of paid personal leave and family leave while the temporary medical leave provision allows substitution of paid sick leave or medical (temporary disability) leave, in cases where these apply to the condition in question. As stated in section 104(c)(2) nothing in the Act requires an employer to provide paid sick leave or medical leave in any situation in which the employer does not normally provide such leave. In both the case of family and medical leave, what is contemplated is that analogous leaves which are paid may be substituted for the bill's unpaid leave in order to mitigate the financial impact of wage loss due to family and temporary medical leaves. Of course, the employer may not trade shorter periods of paid leave specified in subpart 2) of sections 103(d) and 104(c) for the longer periods prescribed by the Act; read together, subsections (1) and (2) of 103(d) and 104(c) mean that an employee is entitled to the benefits of the shorter paid leave, plus any remaining leave time made available by the Act, on an unpaid basis.

Finally, section 103(f) provides a limitation on the right to take family leave when both spouses are employed by the same employer. Under section 103(f), if both parents are employed by the same employer, the total amount of leave that the parents may together take is limited to 10 weeks, except when such leave is needed to care for a seriously ill child. This provision is intended to prevent any employer from being penalized for or discouraged from employing married couples.

MEDICAL LEAVE

Unpaid temporary medical leave is provided only for workers with a "serious health condition." The definition of that term in section 101(10) is broad and intended to cover various types of physical and mental conditions.

With respect to an employee, the term "serious health condition" is intended to cover conditions or illnesses that affect an employee's health to the extent that he or she must be absent from work on a recurring basis or for more than a few days for treatment or recovery. Analogously, with respect to a child or parent, the term "serious health condition" is intended to cover conditions or illnesses that affect the health of the child or parent such that he or she is similarly unable to participate in school or in his or her regular daily activities.

The term "serious health condition" is not intended to cover short-term conditions for which treatment and recovery are very brief. It is expected that such conditions will fall within even the most modest sick leave policies. Conditions or medical procedures that would not normally be covered by the legislation include minor illnesses which last only a few days and surgical procedures which typically do not involve hospitalization and require only a brief recovery period. Complications arising out of such procedures that develop into "serious health conditions" will be covered by the Act. It is intended that in any case where there is doubt whether coverage is provided by this Act, the general tests set forth in this paragraph shall be determinative. Of course, nothing in the Act is intended or may be construed to modify or affect any law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or handicapped status, as section 401 clarifies.

Examples of serious health conditions include heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy, such as severe morning sickness, the need for prenatal care, childbirth and recovery from childbirth. All of these conditions meet the general test that either the underlying health condition or the treatment for it requires that the employee be absent from work on a recurring basis or for more than a few days for treatment or recovery. They also involve either inpatient care or continuing treatment or supervision by a health care provider, and frequently involve both. For example, someone who suffers a heart attack generally requires both inpatient care at a hospital and ongoing medical supervision after being released from the hospital; the patient must also be absent from work for more than a few days. Someone who has suffered a serious industrial accident may require initial lengthy treatment in a hospital and periodic physical therapy under medical supervision thereafter. A cancer patient may need to have periodic chemotherapy or radiation treatment, and a patient with severe arthritis may require periodic treatment such as physical therapy. A pregnant patient is generally under continuing medical supervision before childbirth, may require several days off for severe morning sickness or other complications, receives inpatient care for childbirth and several days thereafter, and is under medical supervision requiring additional time off during the recovery period from childbirth. The legislative history of the Pregnancy Discrimination Act established that the medical recovery period for a normal childbirth is 4 to 8 weeks, with a longer period where surgery or other complications develop.

All of these health conditions require recurring absences of more than a few days from work either for the condition or operation itself or for continuing medical treatment or supervision (e.g., physical therapy for accident victims or severe arthritis patients). Because continuing treatment or supervision may sometimes take the form of intermittent visits to the doctor, section 104(a)(2) of the bill specifically permits an employee to take the leave "intermittently when medically necessary." Only the time actually taken is charged against the employee's entitlement.

Section 104(d) of the bill accommodates employer needs in "any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision", by requiring the employee to make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the employer's operations (subject to the approval of the employee's doctor or other health care provider) and in addition, to give the employer prior notice of the treatment or supervision in a manner which is reasonable and practicable. By "reasonable and practicable", the Committee intends for the employee to give notice in a timely manner and in sufficient time for an employer to make suitable arrangements for the employee's leave so as to avoid undue disruption to the employer.

This subsection (104(d)) clarifies that the section 104(a) requirement concerning the employee's inability to perform his or her job functions due to a serious health condition contemplates inability caused either by the underlying condition or by the need to receive medical treatment or supervision for it. Someone requiring treatment or supervision that can be scheduled to accommodate the employer's convenience obviously may not have a condition which at the time of making the scheduling decision prevents the employee from performing the functions of the job (i.e., someone who needs a hernia operation or prenatal care or has early cancer). However, such an employee does need medical treatment or supervision and must at some point be absent from work to receive it, and hence is, at the time of receiving treatment or supervision, "unable to perform the functions of such employee's position." A narrower construction of the operative language of section 104, under which leave would be available only when the employee literally was so physically or mentally incapacitated that he or she could not work, would deny protection for leaves for treatment or supervision essential to avoid that very incapacity or facilitate recovery from it, a construction that is contrary to common sense and would seriously undermine the purposes of the bill.

Another provision designed to accommodate employer needs is found in section 105, concerning certification of the serious health condition. This provision is designed as a check against employee abuse of the temporary medical leave. Thus, the employer may require the employee to provide certification by the employee's own health care provider who, under section 101(7), can be a person licensed to provide health care services or someone determined by the Secretary of Labor to be capable of providing such services. The Secretary of Labor shall issue regulations determining those persons capable of providing health care services.

The required content of the certification parallels those already in general use by insurers and is to include the date on which the condition began, its probable duration, and the medical facts concerning the condition. In cases of medical leave, the certification must also state that the employee is unable to perform the functions of his or her position. In cases of family leave to care for a seriously ill child or parent, the certification shall also contain an estimate of the amount of time the employee is needed to care for the child or parent. In addition, if the employee's serious health condition prevents him or her from performing his or her job functions, section 106(d) clarifies that the employer and employee are free to agree to an alternative job which the employee is able to perform despite the condition. In this instance, the employer is also free under section 105(c) to request (but not require) the employee to provide additional certification concerning the "extent to which the employee is unable to perform the functions of the employee's position". Section 106(d) specifies, however, that performance in the alternate job, if agreed to, does not constitute use of the temporary leave. Finally, under section 105(d), if the employer has reason to question the original certification, the employer may, at its own expense, require a second certification from a different health care provider chosen by the employer. Such a health care provider may not be employed by the employer on a regular basis. Under section 105(e), the employer may require reasonable periodic recertifications. The certification shall, when possible, be provided in advance or at the commencement of the leave. If the need for leave does not allow for this, such certification should be provided reasonably soon after the commencement of the leave.

Under section 104(b), temporary medical leave may be unpaid, except to the extent that an employer already provides a paid temporary medical leave benefit. But section 104(c)(1) permits an employer who provides paid temporary medical leave for a period of fewer than 15 work weeks a year, to provide the additional weeks of leave needed to attain the full 15 week leave on an unpaid basis. Section 104(c)(2) also permits either the employee or the employer to elect to substitute any of the employee's accrued paid vacation leave, sick leave, or medical leave for any part of the 15 week period, except that the employer is not required by this Act to provide paid sick leave or medical leave in any situation in which the employer does not normally provide such leave.

EMPLOYMENT AND BENEFITS PROTECTION

An employee taking either family or medical leave under this bill is "entitled, upon return from such leave," to restoration to his or her previous position or an "equivalent position with equivalent benefits, pay, and other terms and conditions of empoyment." (Sec. 106.) This provision is central to the entitlement provided in this bill. The right to restoration extends until the expiration of the leave provided for in the Act. If an employer permits a leave to extend beyond the required period under the Act, the right of restoration provided under this Act does not extend during such additional period.

The Committee recognizes that it will not always be possible for an employer to restore an employee to the precise position held before taking leave. On the other hand, employees would be greatly deterred from taking leave without the assurance that upon return from leave, they will be reinstated to a genuinely equivalent position. Accordingly, the bill contains an appropriately stringent standard for assigning employees returning from leave to jobs other than the precise positions which they previously held. First, the standard of "equivalence"—not merely "comparability" or "similarity"—necessarily requires a correspondence to the terms and conditions of an employee's previous position. Second, the standard encompasses all "terms and conditions" of employment, not just those specified. This standard for evluating job equivalence under section 106(a)(1)(B) parallels title VII's standard for evaluating job discrimination in 42 U.S.C. sec. 2000e-2(a)(1), which prohibits "discriminat[ion] with respect to [an employee's] compensation, terms, conditions, or privileges of employment." For purposes of job equivalence, the Committee intends that the statutory language contained in section 106(a)(1)(B) of this Act shall be interpreted as broadly as similar language in section 703(a)(1) of Title VII.

Section 106(a)(2) makes explicit that an employer may not deprive an employee who takes leave of benefits accrued before the date on which the leave commenced. Nothing in the bill, however, should be construed to entitle an employee to the accrual of any seniority or benefits during any period of leave, nor does this section entitle the restored employee to any right, benefit, or position of employment other than any right, benefit or position to which the employee would have been entitled had the employee not taken leave. (Sec. 106(a)(3)(A)(B).) This means that, for example, if but for being on leave, an employee would have been laid off, the employee's entitlement to be rehired is whatever it would have been had the employee not been on leave.

Under section 106(a)(4), the employer may have a formal company policy which requires all employees to obtain medical certification from the employee's health care provider that the employee is able to resume work.

Section 106(b) contains a limited exemption from the requirements of sections 103 and 104 for certain highly compensated employees. An employee is to be considered highly compensated if such salaried employee is among the highest paid 10 percent of employees or one of the 5 highest paid employees of the employees employed by the employer within 75 miles of the facility at which the employee is employed. For such employees, restoration may be denied if (A) such denial is necessary to prevent substantial and grievious economic injury to the employer's operations, (B) the employer notifies the employee of its intent to deny restoration on such basis at the time the employer determines that such injury would occur, and (C) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice. In measuring grevious economic harm, a factor to be considered is the cost of losing a key employee if the leave is not granted. A key employee who takes leave is still eligible for continuation of health benefits although such employee may not be eligible for reinstatement.

Section 106(c) requires an employer to maintain health insurance benefits during periods of family and medical leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date of job restoration. The employer must maintain such coverage under any group health plan, as defined in section 162(i)(3) of the Internal Revenue Code of 1954. Nothing in this section requires an employer to provide health benefits if it does not already do so at the time the employee commences leave. Section 106(c) is strictly a maintenance of benefits provision. It should be noted, however, that if an employer establishes a health benefits plan during an employee's leave, section 106(c) should be read to mean that the entitlement to health benefits would commence at the same point during the leave that the employee would have become entitled to such benefits if still on the job. Leave taken under this Act does not constitute a qualifying event (as defined in section 603(2) of the Employee Retirement Income Security Act or 1974) under the continuation of health benefit provisions contained in Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272). However, a qualifying event may occur when it becomes known that an employee is not returning to employment and therefore ceases to qualify for health benefits under this Act.

Section 106(d) permits an employer and an employee to mutually agree to alternative employment provided that such agreement does not reduce the employee's period of entitlement to unpaid medical leave under the Act. Nothing in this section shall preclude an employer who provides paid medical leave from offering alternative employment on conditions other than required by this section to an employee on paid leave. However, if an employee refuses such an offer of alternative employment, the employee retains the right to unpaid leave.

MAINTENANCE OF HEALTH BENEFITS UNDER MULTIEMPLOYER PLANS

Section 106(c) of the bill requires an employer to maintain coverage under any group health plan for the duration of the employee's family or temporary medical leave, at the level and under the conditions, coverage would have been provided had the employee continued in employment continuously from the date when the leave commenced until the date the employee is restored or, if earlier, the date on which his or her employment would have terminated. In the case of an employer that contributes to a multiemployer health plan (i.e., a health plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements), this requirement means that the employer by which the employee is employed when he or she takes the leave must continue contributing to the plan on behalf of that employee for the duration of the leave, as if the employee had continued in employment throughout the period of leave. This is the rule unless the plan expressly provides for some other method of maintaining coverage for a period of family or temporary medical leave. The employee's benefit rights shall continue to be governed by the terms of the plan.

Regardless of whether an employer is obligated to contribute to a multiemployer health plan on behalf of its employees pursuant to a collective bargaining or other agreement, the terms of a plan, or under a duty imposed by labor-management relations law, the employer, unless the plan expressly provides otherwise, shall for the duration of the leave period be obligated to continue contributing as if the employee were not on leave, notwithstanding any terms of any collective bargaining or other agreement to the contrary, and the employee shall look to the plan for his or her benefit rights.

The Committee recognizes that multiemployer plans need to receive contributions to finance benefit coverage. To ensure that a plan receives employer contributions, the obligation to contribute imposed by the bill, like other statutory obligations imposed by current law, shall be considered an obligation enforceable under 29 U.S.C. sec. 1145 (relating to delinquent contributions to multiemployer plan). This is not intended to preclude any other means of enforcement that the plan may provide or be entitled to pursue, but to vest a plan with an absolute right to invoke section 1145.

During that period of leave, the employer shall make contributions to the plan at the same rate and in the same amount as if the employee were continuously employed. Unless the contrary is clearly demonstrated by the employer (or by the plan, where appropriate), it shall be assumed that the employee would have continued working on the same schedule, at the same wage or salary, and otherwise under the same terms and conditions as he or she normally worked before going on leave. So, for example, if the employee normally worked 160 hours a month before taking family or temporary medical leave and the employer is obligated to contribute to a multiemployer health plan at the rate of $1.25 an hour, the employer would be obligated to continue contributing to the plan on behalf of the employee during the leave period at the rate of $1.25 an hour for 160 hours a month, unless the employer clearly shows that the employee would have worked fewer hours, or the plan clearly shows that employee would have worked more hours, had he or she not been on leave.

A plan may adopt more specific rules governing an employer's contribution obligation during the leave period. For example, a plan may adopt a rule that an employee's normal number of work hours a month is the average number of work hours a month over the month (or a period of months) immediately prior to the employee's leave period. A plan could adopt rules which accommodate its particular reporting period (e.g., monthly, weekly). Also, the Committee intends that an employer shall provide the plan with whatever information is appropriate to assist the plan in determining an employee's status and whether the employer has an obligation to contribute on behalf of the employee.

The bill does not give an employee on family or temporary medical leave any greater rights or benefits under a multiemployer plan than an employee who is not on such leave. The same conditions of coverage shall apply to an employee on such leave as apply to an employee who is not on such leave from the employer. This includes any obligations and conditions with respect to employee contributions.

And, of course, these obligations apply only with respect to an "eligible employee" within the meaning of section 101(3) of the bill; that is, an employee who has met the length of employment standard. Neither the employer nor the multiemployer plan has any obligation under the bill with respect to persons who are not "eligible employees."

PROHIBITED ACTS

The Committee recognizes the possibility that an employer, in certain circumsances, may seek to induce an employee not to take the entitled leave or to retaliate against an employee for taking leave. The bill makes clear that an employer's interference with or attempts to restrain or deny the exercise of or the attempt to exercise any right provided by this Act is unlawful. This prohibition includes, but is not limited to, threats of reprisal or discrimination against any individual for opposing any practice made unlawful by this Act.

It is also unlawful for an employer to discharge or in any other manner discriminate against an employee because such employee has filed a charge, has instituted a proceeding under or related to the bill, has given or is about to give information in connection with any inquiry or proceeding relating to a right provided under this bill or has testified or is about to testify in any inquiry or proceeding relating to a right provided under this bill.

ADMINISTRATIVE PROVISIONS AND CIVIL REMEDIES

The temporary medical and family leave provisions are time specific in two important respects: first, by the duration of the leave once granted, and second, if not granted in a timely manner the right is effectively lost. Cognizant of the time specific nature of the rights created, the bill contains an enforcement scheme designed to provide the most readily available and timely enforcement system possible. It is, therefore, the clear intent of the Committee that all time requirements set forth in the bill be expeditiously met, and that every effort be made to act expeditiously in resolving these cases.

The basic components of the Act's enforcement mechanisms are administrative investigation and hearings containing strict deadlines, alternative judicial enforcement, and the requirement of significant remedies for noncompliance. The availability of an administrative scheme means that aggrieved employees will have access to an already existing Department of Labor structure mandated to investigate and prosecute their claims. At the same time, the imposition of strict time deadlines for action will avoid many of the problems of delay and inaction that often plague administrative enforcement. It is the Committee's intent that all civil remedies apply to state employees as well, including the right to sue their employers.

Just as important is the relief provided. Providing for the award of attorney's fees to prevailing parties will ensure both that attorneys will be willing to represent employees to assert their rights under the Act and that employers will be deterred from violating the provisions of the law. Similarly, the provision of mandatory money damages serves the dual purposes of (1) ensuring that employees will be recompensed for their actual losses and the pain and suffering in being denied leave and thus having to initiate legal action in order to assert their rights and (2) adding to employers' incentives to comply. Actual losses include any actual expenses resulting from a denial of medical benefits in violation of the provisions of this Act. It is the Committee's intent that the relief authorized in this section be available against state employers to the full extent that is Constitutionally permissible.

An individual who believes he or she has been denied any of the rights guaranteed by the Act (including but not limited to restoration to the same or equivalent position following a temporary family or medical leave, or maintenance of health insurance benefits during the leave), or who has reason to believe that he or she will be denied any such rights, may file a charge with an office of the Department of Labor or may bring a civil action to enforce the provisions of this Act. An administrative charge must be filed within one year of the violation. Charges may be filed on behalf of a person or a class of individuals. The Secretary of Labor must investigate the charge and make a determination within 60 days; if the determination is that there is a reasonable basis for the charge, the Secretary must issue and prosecute a complaint. An on-the-record hearing before an administrative law judge ("ALJ") must begin within 60 days of the issuance of the complaint (unless the ALJ has reason to believe that the purposes of the Act would be best furthered by allowing more time to prepare for a hearing). The ALJ's findings, conclusions, and order for relief must be issued within 60 days of the hearings' end. The ALJ's decision becomes the final agency decision unless appealed and modified by the Secretary; the final agency decision may be reviewed in a federal court of appeals. If no such review is sought, the Secretary may petition the appropriate federal district court for enforcement of the final agency order.

If the Secretary has dismissed or failed to take action on a charge within 60 days after filing, the individual who filed the charge may elect to file an action directly in federal or state court, instead of continuing with the administrative enforcement procedure. The individual may also elect to proceed in court if the Secretary, at any point in the administrative procedure, fails to fulfill his or her obligations under the Act.

A charging party may elect, before the commencement of the hearing, to be a party. This will allow that party to present evidence and testimony and to participate fully in the subsequent proceedings in the case. Such election does not, however, relieve the Secretary of his or her duty to prosecute the complaint.

At any time between the filing of a charge and the issuance of the ALJ's findings and conclusions, the parties may negotiate and agree to a settlement. Before the issuance of a complaint, any such agreement entered into by the charging party and the charged employer is effective, unless the Secretary determines within 30 days after notice of the settlement, that such is not generally consistent with the purposes of this title. After the complaint has been issued, it is the Secretary's duty to prosecute the complaint and consequently any settlement agreement will be negotiated between the Secretary and the party charged. Such agreement may not be entered into over the objection of the charging party, unless the Secretary determines that the settlement provides a full remedy for the charging party.

COMMISSION ON FAMILY AND MEDICAL LEAVE

Title II of this Act establishes a bipartisan commission, to be known as the Commission on Family and Medical Leave, to conduct a comprehensive study of existing and proposed family and medical leave policies and the potential costs, benefits, and impact on productivity of such policies on businesses, especially businesses which employ fewer than 50 employees. The Commission will be composed of 12 voting members and 2 ex-officio members. The majority and minority leadership of the House of Representatives and the Senate shall each appoint one member of Congress to the Commission and two additional Commission members selected by virtue of their expertise in family, medical and labor-management issues, including small business representatives. The Secretary of Health and Human Resources and the Secretary of Labor shall serve as nonvoting ex-officio members.

It will be the task of the Commission to explore the relevant family and medical leave issues and options and to make recommendations to Congress within two years of its first meeting. The two year study period is timed so as to provide Congress with an additional year to consider the report of the Commission prior to the change in the small employer exemption to coverage of employers with 35 or more employees.

MISCELLANEOUS

Title IV of the Act contains miscellaneous provisions concerning the effect of this legislation on other legislation and on existing employment benefits, encouraging more generous leave policies, regulations, and effective dates. Section 401(a) generally provides that nothing in the Act shall be construed to modify or affect in any way any Federal or state law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age or handicapped status. Thus, for example, nothing in this legislation may be read to affect or amend Title VII of the 1964 Civil Rights Act, 42 U.S.C. sec. 2000e et seq., as amended by P.L. 95-555, 92 Stat. 2076 (1987).

The bill is also not intended to modify or to affect the Rehabilitation Act of 1973, as amended, or the regulations concerning employment which have been promulgated pursuant to that statute. Thus, the leave provisions of this bill are wholly distinct from the reasonable accommodation obligations of employers who receive Federal financial assistance, who contract with the Federal government, or of the Federal government itself. Employees with disabilities who meet essential job requirements may request such accommodations as job restructuring or the modification of equipment under the 1973 Act. See, e.g., 45 CFR Sec. 84.11 et seq. The purpose of the Act is simply to apply the leave provisions of the bill to all employees and employers within its coverage, and not to modify already existing rights and protections.

Section 401(b) deals with state and local laws, and makes clear that state and local laws providing greater leave rights than those provided herein (assuming state and local compliance with all other Federal laws) may continue to exist. Thus, for example, if a state were to guarantee a longer period of family leave to all employees or to make it a paid leave, nothing in the Act could be read to supersede the state law.

Similarly, section 402(a) specifies that employers must continue to comply with collective bargaining agreements or employment benefit plans providing greater benefits than the Act. Conversely, section 402(b) makes clear that rights under the Act cannot be taken away by collective bargaining or employer plans.

Finally, section 404 provides that the Secretary of Labor may prescribe the necessary regulations for family and temporary medical leave, and section 405 sets forth the Act's effective dates. Generally, with two exceptions, the Act goes into effect six months after the date of enactment. However, the Title creating the Commission goes into effect immediately; and where there is a collective bargaining agreement in effect on the date of enactment, Title I (providing the unpaid family and temporary medical leave) goes into effect on either the date the agreement terminates, or one year after the date of enactment, whichever occurs earlier.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives, the estimate prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974, submitted prior to the filing of this report, is set forth as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 1, 1988.

Hon. AUGUSTUS F. HAWKINS,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 925, the Family and Medical Leave Act of 1987, as ordered reported by the House Committee on Education and Labor on November 17, 1987.

TITLE I

Title I of H.R. 925 would allow a private sector employee, and any employee not covered under Title II, up to ten weeks' leave without pay during any 24-month period, in addition to any other leave, because of the birth of a son or daughter. The placement of a child for adoption or foster care with the employee would also entitle the employee to this leave. In addition, and employee could claim this leave to care for a seriously ill son or daughter. Title I would also permit the employee up to 15 workweeks of temporary medical leave in every 12-month period due to a serious health condition preventing the employee from performing the functions of his or her position. Title I would not apply to any employer of less that 50 workers during the first three years after enactment, or to any employer of less than 35 workers after that time.

The direct costs of providing this leave would be borne entirely by the private employer, and therefore would not result in costs being incurred by the federal government. However, enactment of this bill would entail additional administrative costs for the Department of Labor. Costs would vary with the number of claims filed under H.R. 925. CBO assumes this Act would be administered similarly to the Pension and Welfare Benefit Program, or directly through the Wage and Hour Division.

The Pension and Welfare Benefit Program investigates activities of pension and welfare plans to assure compliance with statutory fiduciary standards, and issues interpretive rules and regulations under these standards. The Pension and Welfare Benefit Program currently processes approximately 1 million reports at a cost of about $47 million annually. The Wage and Hour Division works to obtain compliance with the minimum wage, overtime, child labor, and other employment standards, and we assume could administer this Act as well. This Division handles approximately 500,000 compliance actions per year, as well as fulfilling its other administrative duties. Costs for this division are about $85 million annually. No data are available as to the estimated number of claims that would be filed under the Family and Medical Leave Act. Costs would vary not only with the caseload, but also with the manner in which the Department of Labor assures compliance with these provisions.

TITLE II

Title II of H.R. 925 would allow federal civil service employees up to 18 weeks of leave without pay during any 24-month period, in addition to any other leave, because of the birth of a son or daughter. The placement of a child for adoption or foster care with the employee would also entitle the employee to this leave. In addition, an employee could claim this leave to care for a seriously ill son, daughter, or parent. Title II would also permit an employee up to 26 workweeks of temporary medical leave in every 12-month period due to a serious health condition preventing the employee from functioning in his or her job.

Under current law, there is no comprehensive federal policy on family and medical leave. The Office of Personnel Management provides guidelines for granting leave for various purposes, but implementation of leave policy is up to the discretion of each employee's supervisor.

We estimate that enactment of Title II of H.R. 925 would not significantly increase federal costs. The leave allowed under Title II is unpaid leave, and the employee would be responsible for the employee's share of any benefits they wished to keep current. Although some temporary workers would likely be hired to maintain operations, we assume that their salary would be at or below that of the permanent worker. Also, federal guidelines do not require that benefits be provided to temporary workers. Additional costs could result from providing benefits to the temporary worker, or from increased recruiting and personnel administration.

TITLE III

Title III of this bill would establish the Commission on Family and Medical Leave to study existing and proposed policies on such leave, and the impact of such policies on businesses which employ less than 50 workers. Travel expenses, per diem allowances, and salary and overhead costs for an executive director and staff are also authorized, although no specific authorization level is stated in the bill. We estimate these costs could be about $400,000 per year over the two-year life of the Commission. Costs of Title III most likely would begin in fiscal year 1988.

States and local governments would be responsible for any costs associated with providing their employees with the leave specified in Title I. These costs could vary with the frequency and duration of leave taken, and with the type and number of replacement personnel needed.

Please call me or have your staff contact Michael Pogue if you have further questions.

Sincerely,

JAMES L. BLUM,
Acting Director.

COMMITTEE ESTIMATE

With reference to the statement required by clause 7(a)(1) of Rule XIII of the Rules of the House of Representatives, the Committee agrees with the estimate prepared by the Congressional Budget Office.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee estimates that this bill will have no significant inflationary impact on prices and costs in the operation of the national economy.

COMMITTEE FINDINGS

With reference to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, the Committee's extensive legislative and oversight findings since the 98th Congress are described in the Committee Action and Background and Need for Legislation sections of this report.

STATEMENT REGARDING OVERSIGHT REPORTS FROM THE COMMITTEE ON GOVERNMENT OPERATIONS

In compliance with clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives, no findings or recommendations of the Committee on Government Operations were submitted to the Committee with reference to the subject matter specifically addressed by this legislation.

SECTION-BY-SECTION ANALYSIS OF THE FAMILY AND MEDICAL LEAVE ACT OF 1988 (H.R. 925, AS AMENDED)

Section 1. Short title; table of contents

Designates this Act as the Family and Medical Leave Act of 1988 and sets out the table of contents.

Section 2. Findings and purposes

States Congress' findings that the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly; it is important for fathers and mothers to be able to participate in early childrearing and the care of their children with serious health conditions; the lack of employment policies to accommodate working parents forces many individuals to choose between job security and parenting; and there is inadequate job security for employees who have serious health conditions that prevent them from working temporarily.

The purposes of this Act are to balance the demands of the workplace and the needs of families; to entitle employees to take reasonable leave, for family or medical reasons; and to accommodate the legitimate interests of employers.

TITLE I—GENERAL REQUIREMENTS FOR FAMILY AND MEDICAL LEAVE

Section 101. Definitions

This section defines certain terms for purposes of the Act. Those definitions specifically referenced to the Fair Labor Standards Act are to be interpreted similarly under this Act. Such terms include:

Eligible employee—means any employee as defined in section 3(e) of the Fair Labor Standards Act (FLSA) who is employed for not less than 12 months and not less than 1000 hours over the previous 12 month period, except that such term does not include Federal officers or employees covered under Title II of this Act.

Employer—means any person engaged in commerce who employs 50 or more employees for the first 3 years after the effective date of this title and 35 or more employees thereafter, who is engaged in commerce; any successor in interest of an employer; and any public agency defined under section 3(x) of the FLSA.

Serious health condition—means an illness, injury, impairment, or physical or mental condition which involves inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment or supervision by a health care provider.

Section 102. Inapplicability

This title does not apply to the employees of any facility of an employer at which there are less than 50 employees, for the first three years after the effective date of this title, and when the combined number of employees employed by the employer within 75 miles of the facility is fewer than 50. After such period, this title does not apply to the employees of any facility of an employer at which there are less than 35 employees and when the combined number of employees employed by the employer within 75 miles of the facility is fewer than 35.

Section 103. Family leave requirement

Entitles an employee to 10 weeks of family leave during any 24 month period upon the birth, placement for adoption or foster care, or serious health condition of an employee's son or daughter or parent. The entitlement to leave upon the birth or placement of a child expires at the end of the 12 month period after such birth or placement. Such leave may be taken on a reduced leave schedule upon agreement between the employer and the employee.

Family leave may be unpaid. Either the employee or employer may elect to substitute any accrued paid vacation leave, personal leave, or paid family leave for any part of the 10 week period and such may be reduced from the 10 weeks of unpaid leave. When the need for leave is foreseeable based on an expected birth or adoption, the employee shall provide the employer with reasonable prior notice. When the need for leave is foreseeable based on planned medical treatment or supervision, the employee shall provide the employer with reasonable prior notice and make a reasonable effort to schedule leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider of the employee's child or parent.

In any case in which a husband and wife entitled to family leave are employed by the same employer, the aggregate period of family leave may be limited to 10 weeks, except in the case of a seriously ill child.

Section 104. Temporary medical leave requirement

Entitles any employee, who because of a serious health condition, becomes unable to perform the functions of his or her position to temporary medical leave not to exceed 15 weeks during any 12 month period.

Medical leave may be unpaid. If the employer provides paid temporary medical leave or sick leave, such may be subtracted from the 15 weeks and either the employee or employer may elect to substitute accrued paid vacation leave, sick leave or medical leave for any part of the 15 week period. When the need for leave is foreseeable based on planned medical treatment or supervision, the employee shall provide the employer with reasonable prior notice and make a reasonable effort to schedule leave so as not to disrupt unduly the employer's operations, subject to the approval of the employee's health care provider.

Section 105. Certification

An employer may require that a claim for leave be supported by medical certification. Such certification shall state: (1) the date on which the serious health condition commenced, (2) the probable duration of the condition, and (3) the appropriate medical facts within the provider's knowledge regarding the condition. For purposes of medical leave, such certification shall also state that the employee is unable to perform the functions of his or her position. For purposes of family leave to care for a seriously ill child or parent, such certification shall include an estimate of the amount of time that the employee is needed to care for the child or parent. The employer may require, at its own expense, that the employee obtain a second opinion and that the employee submit periodic medical recertifications.

Section 106. Employment and benefits protection

Entitles any employee upon the return from leave for its intended purpose to be restored to the position held when the leave commenced or to an equivalent position.

The taking of leave shall not result in the loss of any employment benefits earned before the commencement of leave. Except that nothing in this section shall entitle any employee to any right or benefit to which the employee would not have been entitled had the employee not taken leave.

An employer may deny restoration to any salaried employee among the highest 10 percent of employees or the 5 highest paid employees, whichever is greater, if such denial is necessary to prevent substantial and grievous economic injury to the employer. The employer must notify the employee of its intent to deny restoration and if leave has commenced, permit the employee to elect to return to employment.

The employee's pre-existing health benefits shall be maintained during any leave.

Section 107. Prohibited acts

Makes it unlawful for any employer to interfere with, restrain or deny the exercise of any right provided under this title.

Section 108. Administrative enforcement

Authorizes the Secretary of Labor to issue such rules and regulations as are necessary to carry out this section.

Any person alleging an act in violation of this title may file a charge with the Secretary. A charge must be filed within 1 year after the last event constituting the alleged violation.

After the charge is received, the Secretary has 60 days to investigate the charge and either issue a complaint or dismiss the charge. The Secretary and the respondent may enter into a settlement agreement concerning a complaint, except that such shall generally not be entered into over the objection of the charging party.

If at the end of the 60 days period, the Secretary has not issued a complaint, dismissed the charge, or entered into or disapproved a settlement agreement, the charging party may bring a civil action as provided under this title. Such election shall bar further administrative action by the Secretary with respect to the violation alleged in the charge.

An administrative law judge shall commence a hearing on the record within 60 days of the issuance of the complaint. The decision and order of the administrative law judge shall become the final decision and order of the agency unless such is appealed by an aggrieved party within 30 days or the Secretary modifies or vacates the decision, in which case the decision of the Secretary is the final decision.

Any person aggrieved by a final order may obtain review in the United States court of appeals within 60 days after entry of such final order.

Section 109. Enforcement by civil action

Either an employee or the Secretary may bring a civil action against any employer to enforce the provisions of this title in any appropriate United States or state court of competent jurisdiction. A civil action may not be commenced if the Secretary has approved a settlement agreement or issued a complaint.

No civil action may be commenced more than 1 year after the date of the last event constituting the alleged violation.

Section 110. Investigative authority

Provides the Secretary with investigative authority as empowered under section 11(a) of the FLSA.

Section 111. Relief

An employer found in violation of this title is liable to the injured party for any wages, salary, employment benefits, or other compensation denied to such employee, with interest, and an additional amount equal to the greater of either (1) the above amount or (2) consequential damages, not to exceed 3 times the amount determined above.

The court may in its discretion reduce the amount of liability of any employer found to have violated this title upon proof that the employer acted in the reasonable and good faith belief that it was not in violation of this title.

The prevailing party, other than the United States, may be awarded reasonable attorney's fees.

Section 112. Notice

Each employer shall post a notice setting forth the pertinent provisions of this title. Any employer who willfully violates this section is liable up to $100 for each offense.

TITLE II—FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

Extends coverage of the Act to federal government employees. (This title is within the jurisdiction of the Post Office and Civil Service Committee.)

TITLE III—COMMISSION ON FAMILY AND MEDICAL LEAVE

Section 301. Establishment

Establishes the Commission on Family and Medical Leave.

Section 302. Duties

The Commission shall conduct a comprehensive study of existing and proposed policies relating to family and medical leave and the costs, benefits, and impact on productivity of such policies on employers with fewer than 50 employees. The Commission shall submit a report to the Congress within 2 years, which may include legislative recommendations concerning the coverage of employers with fewer than 50 employees.

Section 303. Membership

The Commission shall be composed of 12 voting members and 2 ex-officio members appointed as follows -1 senator, appointed by the majority leader of the Senate, 1 senator appointed by the minority leader of the Senate; 1 member of the House of Representatives appointed by the Speaker of the House of Representatives, 1 member of the House of Representatives appointed by the minority leader of the House of Representatives; and 8 additional members, 2 appointed by each of the above. Such members shall be appointed by virtue of demonstrated expertise in family, disability and labor-management issues and shall include representatives of small business. The Secretary of Health and Human Services and the Secretary of Labor shall serve as nonvoting ex-officio members.

Section 304. Compensation

The Members of the Commission shall be unpaid.

Section 305. Powers

The Commission shall meet within 30 days of appointment and shall hold such hearings as appropriate. The Commission may obtain from any federal agency information necessary to enable it to carry out this Act. The Commission may request use of the facilities, services, or personnel of any Federal agency to assist in carrying out its duties.

Section 306. Termination

The Commission shall terminate 30 days after the date of the submission of its final report to the Congress.

TITLE IV—MISCELLANEOUS PROVISIONS

Section 401. Effect on other laws

Nothing in this Act shall be construed to affect any federal or state law prohibiting discrimination or any state law which provides greater family or medical leave rights.

Section 402. Effect on existing employment benefits

Nothing in this Act shall diminish an employer's obligation under a collective bargaining agreement or employment benefit plan to provide greater leave rights nor may the rights provided under this title be diminished by such an agreement or plan.

Section 403. Encouragement of more generous leave policies

Nothing in this Act shall be construed to discourage employers from adopting leave policies more generous than required under this Act.

Section 404. Regulations

The Secretary shall prescribe such regulations as are necessary to carry out this Act.

Section 405. Effective dates

This Act shall generally take effect 6 months after the date of enactment. In the case of a collective bargaining agreement, in effect on the date of enactment, the Act shall take effect upon the termination of the agreement, but no later than 12 months after enactment. The Commission on Family and Medical Leave shall take effect on the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * * * *

PART III—EMPLOYEES

* * * * * * *

Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

* * * * * * *

§ 2105. Employee

(a) * * *

* * * * * * *

(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws (other than subchapter IV of chapter [53] *53, subchapter III of chapter 63,* of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title, and sections 5550 and 7204 of this title) administered by the Office of Personnel Management; or

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Subpart E—Attendance and Leave

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CHAPTER 63—LEAVE

SUBCHAPTER I—ANNUAL AND SICK LEAVE

Sec.
6301. Definitions.
6302. General provisions.
6303. Annual leave; accrual.
6304. Annual leave; accumulation.
6305. Home leave; leave for Chiefs of Missions; leave for crews of vessels.
6306. Annual leave; refund of lump-sum payment; recredit of annual leave.
6307. Sick leave; accrual and accumulation.
6308. Transfers between positions under different leave systems.
[6309. Repealed.]
6310. Leave of absence; aliens.

6311. Regulations.
6312. Accrual and accumulation for former ASCS county office employees.

SUBCHAPTER II—OTHER PAID LEAVE

6321. Absence of veterans to attend funeral services.
6322. Leave for jury or witness service; official duty status for certain witness service.
6323. Military leave; Reserves and National Guardsmen.
6324. Absence of certain police and firemen.
6325. Absence resulting from hostile action abroad.
6326. Absence in connection with funerals of immediate relatives in the Armed Forces.

SUBCHAPTER III—FAMILY AND TEMPORARY MEDICAL LEAVE

6331. Definitions.
6332. Family leave.
6333. Temporary medical leave.
6334. Certification.
6335. Job protection.
6336. Prohibition of coercion.
6337. Health insurance.
6338. Regulations.

* * * * * * *

Subchapter III—Family and Temporary Medical Leave

§ 6331. Definitions

For purposes of this subchapter—

(1) "employee" means—

(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

(B) an individual under clause (v) or (ix) of such section; whose employment is other than on a temporary or intermittent basis;

(2) "serious health condition" means an illness, injury, impairment, or physical or mental condition which involves—

(A) inpatient care in a hospital, hospice, or residential health care facility; or

(B) continuing treatment, or continuing supervision, by a health care provider;

(3) "child" means an individual who is—

(A) a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, and

(B)(i) under 18 years of age, or

(ii) 18 years of age or older and incapable of self-care because of mental or physical disability; and

(4) "parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

§ 6332. Family leave

(a) Leave under this section shall be granted on the request of an employee if such leave is requested—

(1) because of the birth of a child of the employee;

(2) because of the placement for adoption or foster care of a child with the employee; or

(3) in order to care for the employee's child or parent who has a serious health condition.

(b) Leave under this section—

(1) shall be leave without pay;

(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

(c) An employee may elect to use leave under this section—

(1) immediately before or after (or otherwise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee;

(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

(3) on either a continuing or intermittent basis; or

(4) any combination thereof.

(d)(1) In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the employee shall provide the employing agency with prior notice of such expected birth or adoption in a manner which is reasonable and practicable.

(2) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee's child or parent; and

(B) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

§ 6333. Temporary medical leave

(a) An employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position shall, on request of the employee, be entitled to leave under this section.

(b) Leave under this section—

(1) shall be leave without pay;

(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

(3) shall be in addition to any annual leave, sick leave, family leave, or other leave or compensatory time off otherwise available to the employee.

(c) An employee may elect to use leave under this section—

(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

(3) on either a continuing or intermittent basis; or

(4) any combination thereof.

(d) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

(1) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employing agency, subject to the approval of the employee's health care provider; and

(2) shall provide the employing agency with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

§ 6334. Certification

(a) An employing agency may require that a request for family leave under subsection (a)(3) or (a)(4) of section 6332 or temporary medical leave under section 6333 be supported by certification issued by the health care provider of the employee or of the employees' child or parent, whichever is appropriate. The employee shall provide a copy of such certification to the employing agency.

(b) Such certification shall be sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the medical facts within the provider's knowledge regarding the condition; and

(4) for purposes of section 6333, a statement that the employee is unable to perform the functions of the employee's position.

§ 6335. Job protection

An employee who uses leave under section 6332 or 6333 of this title is entitled to be restored to the position held by such employee immediately before the commencement of such leave.

§ 6336. Prohibition of coercion

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with such employee's rights under this subchapter.

(b) For the purpose of this section, "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 6337. Health insurance

An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6332 or 6333 of this title may elect to continue the employee's health benefits enrollment while in such leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through that individual's employing agency, the appropriate employee contributions.

§ 6338. Regulations

The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Family and Medical Leave Act of 1987.

MINORITY VIEWS

Legislation which is being reported by the House Education and Labor Committee is, in reality, the same old H.R. 925 with a few cosmetic changes. While the bill seeks to address important issues regarding employee leave taking for the care of the sick and newborn, we believe the bill contains so many flaws as to make it completely unworkable. And the costs attached to this legislation, which would have to be borne by U.S. employers and the economy generally, make it completely unaffordable. H.R. 925 is not in any way a bipartisan bill. Only 2 of the 13 Republican members of the Committee voted in favor of the bill.

Today, America is confronting very serious challenges—the Congress is presently attempting to work out a Trade bill which will help to restore some balance in international trade. We are also struggling with a public debt of $2.49 Trillion dollars, and annual deficits approaching $150 billion dollars. To enact legislation such as H.R. 925 which would substantially burden American business and inhibit real economic growth would not only be counter-productive but is an abrogation of our responsibility to enact laws which create a positive economic climate.

Proponents of H.R. 925 claim that American employers are not adjusting to the increased numbers of women in today's workforce, and believe therefore, that Congress must impose "a minimum standard that assures employees the availability of unpaid leave." We disagree. American employers are offering new customized benefit packages in large numbers.

Traditionally, Congress has been unwilling to impose benefit packages on employers and employees, and we believe that such a major and virtually unprecedented change in Congressional disposition to a policy area must be accompanied by more than the anecdotal information and questionable analogies with practices in foreign countries which has been provided to date by the proponents of H.R. 925.

A survey of almost 400 large companies conducted by Catalyst, a New York research and advisory organization in 1986, found that about 35% have increased the length of paid maternity leave in the past five years. Most of these firms have progressive policies which now offer a paid maternity leave package of up to three months. Another study by the Conference Board, a business research group in New York, showed that 2,300 companies now offer some form of maternity leave—a four-fold increase since 1982.

It is important to note that the trend in employee benefits programs for the past decade has been away from providing a single benefit program to which all employees must subscribe, but rather towards serving up benefits "cafeteria style". Recognizing that a business can only allocate a certain dollar amount per employee for benefits, cafeteria plans offer a broad range of choices which permit each employee to select those that meet his or her individual needs.

In sharp contrast to this trend, H.R. 925 would legislate against flexible benefits. It would require that each employees' benefit "budget" be spent on a benefit that the employee may neither want nor need. Why should a single employee, or a married employee with no children, be forced to accept a benefit from his employer which he will never use, while at the same time forfeiting a benefit which he may need?

Marsha Burridge testified before the Education and Labor Committee on March 4, 1987 in behalf of the Independent Insurance Agents of America. Her testimony touched on this very problem:

> As Executive Vice President, one of my responsibilities is to oversee all personal matters, including decisions on benefits. Moreover, as the owner of a company, it is in my best interest to offer benefits that are competitive with others in my industry. Most firms provide benefits to their employees because they want to enhance recruitment, employment, and retention of the best possible people. However, most small businesses can only afford to offer a limited number of benefits, and if mandated to provide parental leave, they may be forced to pass costs on to the consumer in the form of higher prices, or re-evaluate personnel wages and existing benefits. H.R. 925 does not allow the leeway necessary in benefit planning. What may be considered necessary benefits at one firm or in one region of the country may not be the most important or desired benefit at another firm or place. *It forces employees to pay indirectly for benefits they may not need, while cutting out those they prefer.* (Emphasis added.)

An additional concern of the minority members of this Committee is that if H.R. 925 were to be enacted, it would be difficult for Congress to resist demands in the future to impose paid mandated leave on employers. The original draft of H.R. 925 mandated that a Commission be established to study the possibility of mandating paid leave—and while this provision was dropped by the proponents of the bill—it is highly unlikely that they have abandoned this goal. Rather, testimony presented to this Committee on March 5, 1987, by the Women's Legal Defense Fund assures us that this goal has simply been placed in abeyance:

> If we truly had a national policy of accommodating families and work, we might have a whole range of employer requirements, tax incentives, and other public policy mechanisms to ensure the effectuation of that policy. At the very least, employees would have the right to "paid," job-guaranteed leave . . .

Proponents of H.R. 925 often cite similar policies in other nations as a rationale for imposing mandated family and parental leave policies on the American economy. What they fail to recognize, however, are the basic philosophical and cultural differences which set America apart from any other nation on earth. For example, they often cite the fact that Japan provides 12 weeks of partially paid maternity leave to Japanese women in the workforce. An article which appeared in the Washington Post on February 8, 1988, by Margaret Shapiro, entitled "In Japan, the Son Still Rises—Women's Main Role Remains Housewife" sharply delineates our cultural differences:

> In a country where wives are often addressed by their husbands as oi ("hey you") or gusai ("dumb wife"), and the term "women's wisdom" means shallow thinking, career-minded women are a rarity.
>
> Women make up about 40 percent of Japan's work force. But those who venture outside the house usually are given the lowest paid, least significant work, often wearing office uniforms with aprons to run errands and pour tea for bosses and male colleagues. On average, they earn half of what men do.
>
> While most women begin working upon graduation, more than two-thirds quit when they get married and most of the rest resign when they are pregnant, citing a combination of personal desire and social pressure.
>
> I was directly told what a shameful thing it is to continue working when I was pregnant, that it doesn't look good to be working," said Ichiko Ishihara, the only women ever to become a top department store executive here.

One of the major debates over H.R. 925 is the cost which this mandate would impose on American employers and the economy. Supporters of the bill were delighted when the General Accounting Office, at the request of Subcommittee Chairman Clay and ranking minority member Mrs. Roukema, reported that the bill's cost to employers with a workforce of more than fifty would "only" be $188 million dollars annually, and when the bill covers employers of 35 or more, the annual cost rises to $212 million. However, GAO points out that the cost to American business may be as high as $345 million annually, depending on how Congress defines "serious illness". It is important to note that the GAO cost analysis only represents the cost to the employer for continuing health converage for the absent employee.

One glaring flaw in the GAO cost analysis is the assumption that women will take the full 10 weeks of leave allowed under the bill, but about six weeks of this leave will be their available paid vacation, sick, and disability leave. However, H.R. 925 limits the substitution of any employee's leave for any part of the 10 week period to vacation, personal or family leave. Therefore, under H.R. 925, an employee would not be able to take sick leave or disability leave as a part of the 10-week family leave.

Another study which provides a comprehensive analysis of the cost to the employer for continuing health coverage under H.R. 925 was prepared by Robert R. Nathan Associates, Inc., Economic and Management Consultants in Washington, D.C. The study, released in early February, 1988, estimates the cost to employers for continuing health coverage to be anywhere from $188 million to $573 million annually, depending on the definition of "serious illness" and whether or not S. 1265, Senator Kennedy's mandated health benefits bill, is enacted.

It is important to note that none of the cost analyses of H.R. 925 to date have addressed the administrative costs of establishing the program; the costs of replacing the employee on leave; the increased compensation cost for the replacement employee; the loss of productivity costs; the litigation defense costs; and the compensation claims costs. In addition, public sector costs would include administrative costs to ensure compliance; cost of judges' time spent on litigation; and budget support for regulatory agencies charged with enforcement. Nathan did state that some costs could not be easily quantified:

> The fact that losses to productivity from unplanned worker absences cannot be well quantified and do not, therefore, turn up as a dollar figure in this study does not mean that they are costless to industry and, more broadly, to the American economy.

And in the summary, Nathan concluded:

> These direct and indirect costs of the proposal (H.R. 925) defy dollar quantification, but they should be taken into account along with the unquantifiable benefits in a full evaluation of the proposed legislation.

The GAO report did note (based on a survey of 80 firms in two metropolitan labor markets) that about 30 percent of workers would be replaced with temporary employees during their absence.

The American Society for Personnel Administration estimates that the cost of recruitment for a new employee is usually about one-third of the new hire's first year salary; and new employee training costs are about 10 percent of the first year's salary. Productivity down time, or the time lost while the employee learns the job, is often 50 percent of the first year's salary.

Using these guidelines, replacing an employee earning $12,000 annually would cost about $4,000 in recruitment expense; $1,200 in training costs; and $6,000 in lost productivity, for a total cost of $11,200. GAO estimated that 1,675,000 people would take advantage of H.R. 925 in the first year if it were enacted. If only 30 percent of these employees were replaced during their absence, we could conservatively estimate the cost to employers would be an additional $56,280,000 just for temporary replacement employees.

Finally, we object to the enactment of H.R. 925 because supporters of the bill have failed to apply the provisions in the bill to the Congress.

A recent editorial in the Wall Street Journal (February 18, 1988) referred to Congress as "The Last Plantation". The editorial points out that Congress has excluded itself from all of the landmark labor and civil rights laws of the past 50 years, including the Fair Labor Standards Act, the Occupational Safety and Health Act, the Equal Employment Opportunity laws, and the Civil Rights acts.

We believe that if Congress truly believes that a family and medical leave policy should be mandatory for all American employers, that it should be mandatory for Congressmen and Senators. An amendment was offered at the full Committee markup on H.R. 925, and was ruled out of order for jurisdictional reasons. However, assurances were given by Chairman Hawkins that he would seek to obtain the concurrence of the Chairman of the Committee on House Administration so that an amendment to include Congressional employees in H.R. 925 would be debatable on the floor should H.R. 925 be brought up for consideration by the full House of Representatives.

On December 22, 1987, Chairman Hawkins and other members of the Education and Labor Committee wrote to the Chairman of the House Administration Committee asking for such concurrence.

On February 11, 1988, a letter was received from Chairman Annunzio stating that "the objectives of the proposed amendment to H.R. 925 can best be achieved within the institutional framework of Congress." the letter follows:

House of Representatives,
Committee on House Administration,
Washington, DC, February 11, 1988.

Hon. Augustus F. Hawkins,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

Dear Mr. Chairman: Thank you for your letter of December 22, 1987 consigned by our colleagues William L. Clay, Steve Bartlett, Jim Jeffords and Marge Roukema, reporting on the status of H.R. 925, the Family and Medical Leave Act of 1987. You indicate that the legislation applies to virtually all types of public and private employers and employees, but not apply to the House of Representatives or the Congress as a whole. You indicate further that consideration may be given to a floor amendment to include the Congress under the provisions of the bill when it is considered by the House early this year.

The inclusion of Congress under the provisions of H.R. 925 could compromise the Constitutional separation of powers doctrine, which is an essential and sustaining principle supporting the checks and balances of power contained in the U.S. Constitution, Without a countervailing benefit to a principle of governance of equal or greater dignity, the matter is best left to the institutions of Congress to address and resolve internally.

With regard to the House, the Committee has promulgated leaved guidelines for over 450 separate employing authorities. These leave guidelines are based on current Federal policy.

For the above and other reasons, the objectives of the proposed amendment to H.R. 925 can best be achieved within the institutional framework of the Congress. Once the bill is enacted, the Committee will review and adjust its guidelines to reflect changes in Federal policy. This procedure will serve the objectives of H.R. 925, without violating an important Constitutional doctrine, or creating a conflict with the Constitutional responsibilities and prerogatives of the Congress.

The Committee appreciates the deference given this subject by your Committee during consideration of H.R. 925.

With every best wish, I am.

Sincerely,

Frank Annunzio,
Chairman.

Just as Chairman Annunzio believes that the objectives of H.R. 925 can best be achieved within the institutional framework of Congress, we believe they can best be achieved in the workplace through the cooperation of employers and their employees who are in a better position to identify the needs of all concerned, and to formulate employee leave and benefit policies which meet those needs.

To summarize, our objections include:

1. The cost which would be imposed should H.R. 925 become law.
2. Mandated benefits freezes an employee's flexibility to choose the kind of benefit most needed.
3. Congress has never mandated an employee benefit.
4. If H.R. 925 were to become law, within a short time proponents of the bill would urge Congress to impose paid leave benefits.
5. H.R. 925, if enacted, would lead to discrimination against women in their child-bearing years by some employers.
6. Employees would be forced to pay for benefits which they would not receive.

For these reasons, we urge our colleagues to oppose H.R. 925.

Steve Bartlett.
Harris W. Fawell.
Paul B. Henry.
Cass Ballenger.
Fred Grandy.
Dick Armey.

SUPPLEMENTAL VIEWS OF REPRESENTATIVE STEVE GUNDERSON REGARDING H.R. 925 AS REPORTED, THE FAMILY AND MEDICAL LEAVE ACT OF 1987

First I want to commend those Members involved in development of the compromise on H.R. 925, the "Family and Medical Leave Act of 1987," particularly Representatives Roukema, Jeffords, and Clay. I do agree that the bill as reported alleviates a number of the concerns over the legislation's adverse impact on business—particularly on small employers. Second, I want to go on record as saying that some form of Federally protected parental leave in today's workplace may very well be warranted if such leave is reasonable and is taken by either parent at the birth or adoption of a child. If there is a proper role for the Federal government to play in providing job security protection to working family members, it is in this area. However, I do continue to have a number of concerns over H.R. 925 as it extends far beyond leave for parents at the birth or adoption of a child.

There is no doubt that at a time when 44 percent of our Nation's workforce is comprised of women, a number that is expected to increase to 47 percent by the year 2000, we must take into account the very special needs of this population in the workplace. This is particularly important since the vast majority of those women who work today, do so for purely economic reasons.

According to recent studies, only about 40 percent of working women are now covered by formal parental leave policies. Therefore I think that the enactment of Federal legislation to protect the job security of working parents is justifiable, but only if we view our role as simply setting minimum standards under these limited circumstances. My main concern is that of determining how far the Federal government should go in mandating national standards to private employers and to State and local governments on what their employee leave policies should be. It is very important that any Federal law enacted to address these concerns, must deal fairly with employers as well as workers, otherwise the measure could backfire, resulting in increased discrimination against women of child-bearing age, as well as in other negative consequences.

In fact, the further we get away from the specific purpose of allowing families, particularly women, to have children while maintaining essential employment, the less of a chance we have in seeing any form of parental leave legislation enacted in this or any other Congress. In this and the many other labor bills before us this year, we must make very difficult determinations on how far the Federal government should go in imposing requirements on employers.

As stated above, if our economy is such today that both spouses must work to make ends meet, Federally mandated parental leave is justifiable for those who want to have families but who cannot afford to lose their jobs to do so. The U.S. is after all the only industrialized nation which does not require employers to provide short-term leave to pregnant workers—with over 127 other countries providing some form of parental leave protections averaging 12-14 weeks. However, when we begin to extend this job security protection into other areas—particularly in the provision of medical leave and leave for caring for family members other than children, we run the risk of stifling efforts by employers who are increasingly providing flexible, individualized benefits plans to workers; of tying employers' hands, particularly where jobs are not easily filled temporarily; and of imposing inflexible policies that will result in too many workers being absent from the workplace at a single time.

Further, most State laws in this area concentrate only on maternity or parental leave for birth or adoption of a child, and care for seriously ill children. Some 17-plus States have enacted State laws, with 26 others currently considering family leave legislation. However, for the most part these state laws are providing just minimum protections for working parents so as not to tie the hands of employers. Few of these extend leave for care of family members other than employees' children—or for medical leave.

For those of us who would like to see a fair but limited parental leave bill enacted, we see the extension of coverage provided for under H.R. 925 as reported, as a threat to the realization of such a protection. We may have a chance of enacting for the 1st time, a Federal policy that makes the workplace sensitive to the needs of the working family. I think it is defensible and enactable if we do not dilute its intent. If we find, after careful study, that we truly need to extend this protection to others, then we should do so at a later time.

STEVE GUNDERSON.

ADDITIONAL DISSENTING VIEWS OF REPRESENTATIVES FAWELL, BARTLETT, BALLENGER, ARMEY, AND HENRY

The numerous problems associated with H.R. 925 do not just affect private enterprise. This legislation also superimposes an extensive "one way for all" mandate on all state and local governments without regard to the fact that public employee benefit plans are reflective of local character and priorities, the unique public services each local government must provide, and the ability of local taxpayers to provide such benefits.

Local governmental entities—law enforcement, fire fighters, schools, and hospitals—all have particular public missions. Granting public employees the right to take the leave mandated in H.R. 925 would disrupt those services and take basic control away from local tax bodies.

For example, a relatively new and hard-to-replace physics teacher could take unforseeable adoption or foster child leave for 10 weeks without notice of a date of departure or return. The leave could commence at inappropriate times, such as within two weeks of the end of a semester when final examinations are being developed. A much-needed and hard-to-find special education teacher could take non-emergency leave, although others depend on his or her services. A valued physical therapist could take leave regardless of the effect it would have on the hospital's public services. The same is true of vital police and fire services.

As with private employers, this mandate will generate a new federal bureaucracy with rules, guidelines, and administrative and judicial review over the implementation of state and local policies and contractual agreements. Such interference will undoubtedly interrupt the ability of state and local governments to continue fulfilling their basic mission to deliver vital public services.

Harris W. Fawell.
Cass Ballenger.
Paul B. Henry.
Steve Bartlett.
Dick Armey.

ADDITIONAL VIEWS OF CONGRESSMAN TIMOTHY J. PENNY

The House Education and Labor Committee favorably reported H.R. 925, the Family and Medical Leave Act, on November 17, 1987. The bill is expected to come before the whole House in the next few months. I am opposed to this legislation in its current form.

The reported bill was a compromise version that would require employers with 50 or more employees to grant 10 weeks of unpaid family leave (over a two-year period) and 15 weeks of unpaid medical leave (over one year) to employees who work at least 20 hours per week and have been employed by the business for at least one year.

Although these changes were made, they do not address my basic objection to this legislation, which is in federally mandating this benefit. By proscribing to business the length and type of benefit they must provide, we have effectively removed flexibility for both employees and employers. I believe that it should be the prerogative of the employee, either directly or through union representation, to negotiate the fringe benefit package, which may include family and medical leave, that is best-suited to the employee's needs.

I am also concerned that if family and medical leave is required, employers may reduce or drop other benefits in order to absorb the costs of complying with the mandate. "Cafeteria style" benefit plans offer employees and employers a great deal of flexibility in designing fringe benefit packages that suit the individual and unique needs of employees. Mandating any benefit like parental and medical leave would reduce the number of benefit options for employees. The unintended consequence of this legislation would be to reduce employee benefits.

Finally, I want the record to indicate that I could support an alternative or substitute to H.R. 925 that would limit the scope of the bill to maternity benefits. While many union contracts include maternity benefits and many other employers have a policy of unpaid leave for the birth or adoption of a child, I am aware that such a fringe benefit does not exist for a large percentage of working parents. Furthermore, I am well aware, as the Majority points out in their Report, of the changing composition of the American laborforce. Many families must make a choice between a career and a baby, but not both. A limited maternity policy of 10 weeks is something I believe a majority of Members of Congress could endorse as addressing a concern of working parents.

TIMOTHY J. PENNY.

ADDITIONAL VIEWS OF HON. THOMAS J. TAUKE ON THE COMMITTEE REPORT ON H.R. 925

During full committee consideration of H.R. 925, I proposed an amendment to further clarify the circumstances under which employees are eligible for sick leave. The GAO report determined that the cost to employers of mandated family and medical leave for employers of 50 or more qualified employees would be at least $188 million annually. The costs are based on the standard definition used in the National Health Interview Survey. I strongly believe that this legislation must be clear in its intent. The definition of a serious health condition should be specifically defined as illnesses which are expected to require at least 31 days of bed rest.

According to the Committee Report which accompanied the Family and Medical Leave Act of 1986, the definition of "serious health condition" is "broad and intended to cover various types of physical and mental conditions." What does this really mean? Without specific guidelines, employees could take unpaid sick leave for brief, intermittent periods of time and without medical certification. There is no doubt that the loosely drawn definition of circumstances under which medical leave is available will only lead to confusion, to abuse and to litigation.

Unpaid medical leave should be defined by specific criteria. Private insurance companies, for example, do not pay insurance benefits based on terminology like "serious health condition." In determining the costs of the Family and Medical Leave Act, the General Accounting Office [GAO] defined "serious health condition" as one which is expected to require a minimum of 31 days of bed rest. The GAO also estimated the costs of the sick leave benefit under a 21 day definition. In either case, the GAO determined that this measuring tool is the most workable device. I believe that the definition must contain one more criteria—medical evidence.

(Parenthetically, the GAO report costs estimates would clearly be greatly understated if a different, shorter time measure were used. According to the GAO, 610,000 workers would be eligible for medical leave under the 31 days of bed rest definition at an annual cost of $53 million. To revise the definition to 21 days of bed rest, the costs of continued health coverage alone would more than double to $120 million annually.)

One of the primary purposes of this bill is to provide job security to employees with serious health conditions. The Committee Report does not adequately clarify the circumstances under which workers can take temporary medical leave. A clear statutory definition of "serious health condition" would ensure that the medical leave mandated by this proposal would be used for the intended purpose. The proponents of H.R. 925 have consistently argued that the sick leave provisions are intended to cover serious illnesses and not short-term illnesses. The lack of clear statutory language on this important issue alone underscores the fact that this legislation is unworkable.

THOMAS J. TAUKE.

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